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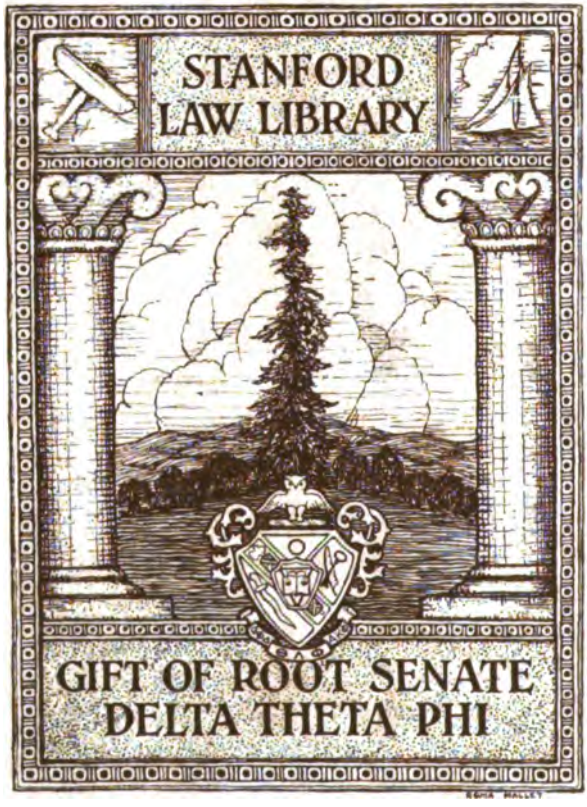

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PREFACE.

THE Merchant Shipping Act, 1876, which came into operation on the 1st of October, 1876, is the fifteenth Act of Parliament relating exclusively to Merchant Shipping that has been passed since 1854. In the year 1854 the whole of the then existing statute law on this subject was repealed and consolidated into one Act, which may appropriately be called a Merchant Shipping Code. Since that time the enormous development of our commerce, the changes in shipbuilding, and the ever-increasing care for the preservation of life at sea, have caused fourteen other Acts to be added to that of 1854. By these enactments many sections of the Act of 1854 are repealed or modified, new provisions are engrafted on to those that are still in force, and new rules are made on subjects not considered in it. Besides this, the subsequent Acts repeal and modify portions of each other in the same way. Thus the possession of separate copies of each of the Acts is not only in many cases useless, but may be misleading. Added to this, numerous Orders in Council have been issued, pursuant to powers given by Parliament, and these repeal and alter each other in the

same way as the Acts, and moreover are only to be found in the voluminous back files of the *London Gazette*. Finally, many of the enactments are not perfectly clear in their meaning, and have had to be construed and explained by the Law Courts.

The present work has aimed at collecting these various sources of law, and presenting them more or less in the form of a Code. The Act of 1854 is taken as the basis of the work, and to each of its sections there are added sections of subsequent Acts, together with any Orders in Council and decided cases relating to the same topic. Besides this, there are interspersed throughout the work in the form of notes, the leading principles of the Maritime or Common Law on all the subjects treated of in the Acts; and for this purpose the cases in the United States Courts, and especially those in the Supreme Court, have been referred to, besides those decided in this country. The American cases, though not absolutely binding on our Courts, always receive the highest consideration, especially on questions of maritime law, since their judgments are in most cases founded on precisely the same principles as those which prevail in our Courts. Questions of Admiralty jurisdiction have also been considered wherever they arise, and the work contains a summary of the powers and jurisdiction of the County Courts in Admiralty, and also of the Vice Admiralty Courts abroad. It is hoped that it may prove useful to members of the legal profession who are occupied with shipping

questions as a book of reference, and to shipowners, masters, and others practically engaged in shipping, as a means of knowing what their duties are, and what liabilities they are subject to for neglecting them; also to consular officers, government officials, and others employed in carrying out the Acts, as a means of ascertaining their powers, and the mode provided for giving them effect.

2, King's Bench Walk, Temple,
2nd November, 1876.

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THE sections of each of the Acts that relate to the same subject have been collected, and, as far as possible, put together, so that the whole legislation on any point may be seen at once. The schedules are placed after the section relating to them. Sections repealing or amending others, have not been set out at length, but the repeals or amendments effected by them are noted under the sections that they alter.

An attempt has been made to introduce a uniformity of terms throughout the Acts. Thus in the Act of 1854, the terms "shipping masters" and "shipping offices" are used, but as these names were abolished by the Act of 1862, and those of "superintendent of a mercantile marine office," and "mercantile marine offices," substituted, the latter have been used throughout, and so on with other changes of name; where any powers or duties are transferred from one body or person to another, the name of the body or person now exercising the powers or performing the duties, is substituted for the one originally mentioned in the enactment.

Orders in Council, rules, &c., are placed with the sections treating of the same subject. The numbers of sections on the

top of the margin of each page show what sections of the principal Act are contained in each page.

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THE

MERCHANT SHIPPING ACTS, 1854 TO 1876

(CONSOLIDATED).

THE "MERCHANT SHIPPING ACT, 1854," 17 & 18 VICT. C. 104.
THE "MERCHANT SHIPPING REPEAL ACT, 1854," 17 & 18 VICT. C. 120.
THE "MERCHANT SHIPPING ACT AMENDMENT ACT, 1855," 18 & 19 VICT. C. 91.
THE "MERCHANT SHIPPING ACT AMENDMENT ACT, 1862," 25 & 26 VICT. C. 63.
THE "MERCHANT SHIPPING ACT, 1854, AMENDMENT ACT, 1867," 30 & 31 VICT. C. 124.
THE "COLONIAL SHIPPING ACT, 1868," 31 & 32 VICT. C. 129.
THE "MERCHANT SHIPPING (COLONIAL) ACT, 1869," 32 VICT. C. 11.
THE "MERCHANT SHIPPING ACT, 1871," 34 & 35 VICT. C. 110.
THE "MERCHANT SHIPPING ACT, 1872," 35 & 36 VICT. C. 73.
THE "MERCHANT SHIPPING ACT, 1873," 36 & 37 VICT. C. 85.
THE "MERCHANT SHIPPING ACT, 1876," 39 & 40 VICT. C. 80.

WHEREAS it is expedient to amend and consolidate the Acts relating to Merchant Shipping: be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons in this present parliament assembled, and by the authority of the same, as follows:

Preliminary.

§ 1.

1. This Act may be cited for all purposes as "The Merchant Shipping Act, 1854."

The other Acts may be cited by the names in the above list.

Construction.

39 & 40 Vict. c. 80 s. 2.—This Act (The Merchant Shipping Act, 1876) shall be construed as one with the Merchant

§§ 1, 2.

Shipping Act, 1854, and the Acts amending the same; and the said Acts and this Act may be cited collectively as the "Merchant Shipping Acts, 1854 to 1876."

Definitions.

2. In the construction and for the purposes of this Act (if not inconsistent with the context or subject matter) the following terms shall have the respective meanings hereinafter assigned to them; that is to say,

"Her Majesty's dominions."

"Her Majesty's dominions" shall mean Her Majesty's dominions strictly so called, and all territories under the government of the East India Company (*a*), and all other territories (if any) governed by any charter or licence from the Crown or Parliament of the United Kingdom:

"United Kingdom."

"The United Kingdom" shall mean Great Britain and Ireland:

"British possession."

"British possession" shall mean any colony, plantation, island, territory or settlement within Her Majesty's dominions, and not within the "United Kingdom:"

In "The Merchant Shipping (Colonial) Act, 1869" (32 Vict. c. 11, s. 2), the term "British possession" means any territory or place situate within Her Majesty's dominions, and not forming part of the United Kingdom, or of the Channel Islands, or Isle of Man; and all territories and places under one legislature as hereinafter defined are deemed to be one British possession for the purposes of this Act.

It is not specially enacted that this Act shall be construed with the Merchant Shipping Acts; but there is nothing in the Act inconsistent with such a construction.

"Canada."

32 Vict. c. 11, s. 7.—In the construction of "The Merchant Shipping Act, 1854," and of the Acts amending the same, Canada shall be deemed to be one British possession.

"Legislature."

32 Vict. c. 11, s. 2.—The term "legislature" includes any person or persons who exercise legislative authority in the British possession, and where there are local legislatures as well as a central legislature, means the central legislature only.

"Colony."

In "The Courts (Colonial) Jurisdiction Act," 1874 (37 & 38 Vict. c. 27, s. 2), the term "colony" shall not include any places within the United Kingdom, the Isle of Man, or the Channel Islands, but shall include such territories as may for

(*a*) Dissolved by 36 & 37 Vict. c. 17, s. 36.

§ 2.

the time being be vested in Her Majesty by virtue of an Act of Parliament for the Government of India, and any plantation, territory, or settlement situate elsewhere within Her Majesty's dominions, and subject to the same local government; and for the purposes of this Act, all plantations, territories, and settlements under a central legislature shall be deemed to be one colony under the same local government.

This Act, which consists practically of only one section (s. 3), contains nothing to prevent its being construed with the Merchant Shipping Acts.

"The Treasury" shall mean the commissioners of Her Majesty's Treasury: "Treasury."

"The Admiralty" shall mean the Lord High Admiral or the commissioners for executing his office: "Admiralty."

"The Board of Trade" shall mean the Lords of the Committee of Privy Council appointed for the consideration of matters relating to trade and foreign plantations (*b*): "Board of Trade."

"The Trinity House" shall mean the master, wardens, and assistants of the guild, fraternity, or brotherhood of the most glorious and undivided Trinity and of St. Clement, in the parish of Deptford Strond, in the county of Kent, commonly called the Corporation of the Trinity House of Deptford Strond: "Trinity House."

"The Port of Dublin Corporation" shall mean the Corporation for Preserving and Improving the Port of Dublin: "Port of Dublin Corporation."

By the "Dublin Port Act, 1867," 30 Vict. c. 81 (local and personal), s. 2, the Port of Dublin Corporation was divided into two separate Corporations, one to regulate the management of the lighthouses of the district, and to be called "the Commissioners of Irish Lights," the other to undertake the management of the port, and to be called "the Dublin Port and Docks Board." These new names are substituted throughout these Acts, without reference being made to the enactment making the change. Change of name.

"Consular officer" shall include consul general, consul, and vice-consul, and any person for the time being discharging the duties of consul general, consul, or vice-consul: "Consular officer."

"Receiver" shall mean any person appointed in pursuance of this Act receiver of wreck: "Receiver."

"Pilotage authority" shall include all bodies and persons "Pilotage authority."

(*b*) They may be described in all Acts of Parliament, contracts, deeds, &c., as "the Board of Trade" without expressing their names (24 & 25 Vict. c. 47, s. 63.).

§ 2.

authorised to appoint or license pilots, or to fix or alter rates of pilotage, or to exercise any jurisdiction in respect of pilotage :

"Pilot." "Pilot" shall mean any person not belonging to a ship who has the conduct thereof :

"Qualified pilot." "Qualified pilot" shall mean any person duly licensed by any pilotage authority to conduct ships to which he does not belong :

"Master." "Master" shall include every person (except a pilot) having command or charge of any ship :

"Seaman." "Seaman" shall include every person (except masters, pilots, and apprentices duly indentured and registered) employed or engaged in any capacity on board any ship :

"Salvor." "Salvor" shall, in the case of salvage services rendered by the officers or crew or part of the crew of any ship belonging to Her Majesty, mean the person in command of such ship :

"Person." "Person" shall include body corporate.

"Ship." "Ship" shall include every description of vessel used in navigation not propelled by oars :

The criterion as to whether a vessel falls under the category of ship, is, whether the vessel be one whose real habitual business is to go to sea ; if so, though propelled by oars as well as sails, it is a ship within the meaning of the Act. If she does not go to sea at all she is not a ship in this sense (*c*).

"Foreign-going ship." "Foreign-going Ship" shall include every ship employed in trading or going between some place or places in the United Kingdom, and some place or places situate beyond the following limits : that is to say, the coasts of the United Kingdom, the islands of Guernsey, Jersey, Sark, Alderney, and Man, and the continent of Europe between the river Elbe and Brest inclusive :

"Home-trade ship." "Home-trade ship" shall include every ship employed in trading or going within the following limits : that is to say, the United Kingdom, the islands of Guernsey, Jersey, Sark, Alderney, and Man, and the continent of Europe between the river Elbe and Brest inclusive :

(*c*) *Ex parte Ferguson*, L. R. 6 Q. B. 280 ; *The C. S. Butler*, L. R. 4 A. & E. 241.

§ 2.

"Home-trade passenger ship" shall mean every home-trade ship employed in carrying passengers : "Home-trade passenger ship."

"Lighthouses" shall, in addition to the ordinary meaning of the word, include floating and other lights exhibited for the guidance of ships, and "buoys and beacons" shall include all other marks and signs of the sea : "Lighthouses."

"Wreck" shall include jetsam, flotsam, lagan, and derelict found in or on the shores of the sea or any tidal water : "Wreck."

In the Merchant Shipping Act, 1876, the following terms are used with the meanings respectively assigned to them for each country. By section 2 of that Act it is enjoined that "this Act shall be construed as one with the Merchant Shipping Act, 1854, and the Acts amending the same." These terms, therefore, if used in the other Acts, have the same meanings as in the Act of 1876.

Application of Act to Scotland.

39 & 40 Vict. c. 80, s. 41.—In the application of this Act to Scotland,

The provision with respect to a prosecution not being instituted except by or with the consent of the Board of Trade shall not apply. (*See under sec.* 291, *p.* 244.)

"Judge of a county court," shall be deemed to include a sheriff and sheriff substitute, and

"Registrar of a county court" shall be deemed to include sheriff clerk, and

"A master of the Supreme Court of Judicature" shall mean the Queen's and Lord Treasurer's Remembrancer.

Application of Act to Ireland.

39 & 40 Vict. c. 80, s. 42.—In the application of this Act to Ireland,—

"Judge of a county court" shall be deemed to include "chairman of a county," and "the recorder of any borough";

"Registrar of a county court" shall be deemed to include the clerk of the peace or registrar or other person discharging the duties of registrar of the Court, of the chairman of a county, or the recorder of a borough ;

"Stipendiary magistrate" shall be deemed to include any of the justices of the peace in Dublin metropolis and any resident magistrate, and

"A Master of the Supreme Court of Judicature" shall mean one of the masters of the superior courts of common law in Ireland.

Application of Act to Isle of Man.

39 & 40 Vict. c. 80, s. 43.—In the application of this Act to the Isle of Man,—

"Judge of a county court" shall mean the water bailiff;

"Stipendiary magistrate" shall mean a high bailiff;

"Registrar of a county court," shall mean a clerk to a deemster or a clerk to justices of the peace ;

§§ 2, 3.

"A master of the Supreme Court of Judicature" shall mean the clerk of the rolls.

The following terms (*used in secs.* 66 *to* 77 of "The Merchant Shipping Act Amendment Act, 1862," 25 & 26 Vict. c. 63, see Part XI.), shall have the respective meanings hereby assigned to them, if not inconsistent with the context or subject matter; that is to say,

"Report." The word "Report" shall mean the report required by the Customs Laws to be made by the master of any importing ship:

"Entry." The word "Entry" shall mean the entry required by the Customs Laws to be made for the landing or discharge of goods from an importing ship:

"Goods." The word "Goods" shall include every description of wares and merchandise:

"Wharf." The word "Wharf" shall include all wharves, quays, docks, and premises in or upon which any goods when landed from ships may be lawfully placed:

"Warehouse." The word "Warehouse" shall include all warehouses, buildings, and premises in which goods when landed from ships may be lawfully placed:

"Wharf-owner." The expression "Wharf Owner" shall mean the occupier of any wharf, as hereinbefore defined:

"Warehouse owner." The expression "Warehouse Owner" shall mean the occupier of any warehouse, as hereinbefore defined:

"Shipowner." The word "Shipowner" shall include the master of the ship and every other person authorised to act as agent for the owner, or entitled to receive the freight, demurrage, or other charges payable in respect of such ship:

"Owner of goods." The expression "Owner of Goods" shall include every person who is for the time being entitled, either as owner or agent for the owner, to the possession of the goods, subject, in the case of a lien, if any, to such lien.

Commencement of Acts.

3. This Act shall come into operation on the 1st day of May, 1855.

39 & 40 Vict. c. 80, s. 3. "The Merchant Shipping Act, 1876," shall come into operation on the 1st day of October, 1876 (which day is in this Act referred to as the commence-

ment of this Act); nevertheless any Orders in Council and general rules under this Act may be made at any time after the passing of this Act but shall not come into force before the commencement of this Act.

Exemptions.

Exemption of Her Majesty's ships.

4. This Act shall not, except as hereinfter specially provided, apply to ships belonging to Her Majesty.

Foreign Ships.

Power for Her Majesty by Order in Council to apply certain provisions of Merchant Shipping Acts to foreign ships.

39 & 40 Vict. c. 80, s. 37.—Whenever it has been made to appear to Her Majesty that the government of any foreign state is desirous that any of the provisions of the Merchant Shipping Acts, 1854 to 1876, or of any Act hereafter to be passed amending the same, shall apply to the ships of such State, Her Majesty may by Order in Council declare that such of the said provisions as are in such Order specified shall (subject to the limitations, if any, contained in the Order) apply, and thereupon, so long as the Order remains in force, such provisions shall apply (subject to the said limitations) to the ships of such State, and to the owners, masters, seamen, and apprentices of such ships when not locally within the jurisdiction of such State, in the same manner in all respects as if such ships were British ships.

Orders in Council.

Provision as to Order in Council.

39 & 40 Vict. c. 80, s. 38.—Where Her Majesty has power under the Merchant Shipping Act, 1854, or any Act passed or hereafter to be passed amending the same, to make an Order in Council, it shall be lawful for Her Majesty from time to time to make such Order in Council, and by Order in Council to revoke, alter, or add to any Order so made.

Every such Order in Council shall be published in the London Gazette, and shall be laid before both Houses of Parliament within one month after it is made, if Parliament be then sitting, or if not, within one month after the then next meeting of Parliament.

Upon the publication of any such Order in the London Gazette, the Order shall, after the date of such publication, or any later date mentioned in the Order, take effect as if it were enacted by Parliament.

Coasting Trade of British Possessions.

32 Vict. c. 11 (The Merchant Shipping (Colonial) Act 1869), s. 4.—After the commencement of this Act the legislature of a British possession by any Act or ordinance, from time to time,

§§ 4, 5.

may regulate the coasting trade of that British possession, subject in every case to the following conditions:

(1.) The Act or ordinance shall contain a suspending clause, providing that such Act or ordinance shall not come into operation until Her Majesty's pleasure thereon has been publicly signified in the British possession in which it has been passed.

(2.) The Act or ordinance shall treat all British ships (including the ships of any British possession) in exactly the same manner as ships of the British possession in which it is made.

(3.) Where by treaty before the passing of this Act Her Majesty has agreed to grant to any ships of any foreign state any rights or privileges in respect of the coasting trade of any British possession, such rights and privileges shall be enjoyed by such ships for so long as Her Majesty has already agreed or may hereafter agree to grant the same, anything in the Act or ordinance to the contrary notwithstanding.

Saving for Colonial inland waters.

39 & 40 Vict. c. 80, s. 44.—Nothing in this Act ("The Merchant Shipping Act, 1876,") shall apply to any vessel employed exclusively in trading or going from place to place in any river or inland water, of which the whole or part is in any British possession, and the provisions of this Act relating to deck cargo shall not apply to deck cargo carried by a ship engaged in the coasting trade of any British possession (*see under sec.* 291, *p.* 251).

Division of Act.

5. This Act shall be divided into eleven parts:

The first part relating to the Board of Trade: its general functions:

The second part to British ships: their ownership, measurement and registry:

The third part to masters and seamen:

The fourth part to safety and prevention of accidents:

The fifth part to pilotage:

The sixth part to lighthouses:

The seventh part to the Mercantile Marine Fund:

The eighth part to wrecks, casualties, and salvage:

The ninth part to liability of shipowners:

The tenth part to legal procedure:

The eleventh part to miscellaneous matters.

PART I.

THE BOARD OF TRADE: ITS GENERAL FUNCTIONS.

§§ 6-8.

Board of Trade to be department to superintend merchant shipping.

6. The Board of Trade shall be the department to undertake the general superintendence of matters relating to merchant ships and seamen, and shall be authorised to carry into execution the provisions of this Act, and of all other Acts relating to merchant ships and seamen in force for the time being, other than such Acts as relate to the revenue.

Certificates and documents purporting to be sealed or signed in a given manner to be received in evidence.

7. All documents whatever purporting to be issued or written by or under the direction of the Board of Trade, and purporting either to be sealed with the seal of such Board, or to be signed by one of the secretaries or assistant secretaries to such Board, shall be received in evidence, and shall be deemed to be issued or written by or under the direction of the said Board, without further proof, unless the contrary be shown; and all documents purporting to be certificates issued by the Board of Trade in pursuance of this Act, and to be sealed with the seal of such Board, or to be signed by one of the officers of the Marine Department of such Board, shall be received in evidence, and shall be deemed to be such certificates, without further proof, unless the contrary be shown.

Board of Trade to issue forms of instruments.

8. The Board of Trade may from time to time prepare and sanction forms of the various books, instruments, and papers required by this Act other than those required by the second part thereof, and may from time to time make such alterations therein as it deems requisite; and shall, before finally issuing or altering any such form, give such public notice thereof as it deems necessary in order to prevent inconvenience, and shall cause every such form to be sealed with such seal as aforesaid, or marked with some other distinguishing mark, and to be supplied at the custom houses and mercantile marine offices of the United Kingdom, free of charge, or at such moderate prices as it may from time to time fix, or may license any persons to print and sell the same; and every such book,

§§ 8-11.

instrument, and paper as aforesaid shall be made in the form issued by the Board of Trade, and sanctioned by it as the proper form for the time being; and no such book, instrument, or paper as aforesaid, unless made in such form, shall be admissible in evidence in any civil proceeding on the part of any owner or master of any ship; and every such book, instrument, or paper, if made in a form purporting to be a proper form, and to be sealed or marked as aforesaid, shall be taken to be made in the form hereby required, unless the contrary is proved.

Certain forms and instruments to be exempt from stamp duty.

9. All instruments used in carrying into effect the Second Part of this Act, if not already exempted from stamp duty, and all instruments which by the Third, Fourth, Sixth, or Seventh Parts of this Act are required to be made in forms sanctioned by the Board of Trade, if made in such forms, and all instruments used by or under the direction of the Board of Trade in carrying such parts of this Act into effect, shall be exempt from stamp duty.

Penalties for forgery of seal and fraudulent alteration of forms, and for not using forms issued by Board of Trade.

10. Every person who forges, assists in forging, or procures to be forged, such seal or other distinguishing mark as aforesaid, or who fraudulently alters, assists in fraudulently altering, or procures to be fraudulently altered, any form issued by the Board of Trade, with the view of evading any of the provisions of this Act or any condition contained in such form, shall for each offence be deemed guilty of a misdemeanor; and every person who, in any case in which a form sanctioned by the Board of Trade is by the Third Part of this Act required to be used, uses without reasonable excuse any form not purporting to be so sanctioned, or who prints, sells, or uses any document purporting to be a form so sanctioned, knowing the same not to be so sanctioned for the time being, or not to have been prepared and issued by the Board of Trade, shall for each such offence incur a penalty not exceeding 10*l.*

Application of moneys and fines paid to Board of Trade.

11. Subject to the provisions hereinafter contained, all fees and payments (other than fines) coming to the hands of the Board of Trade, under the Third and Fourth Parts of this Act, shall be carried to the account of the Mercantile Marine Fund hereinafter mentioned, and shall be dealt with as herein prescribed in that behalf; and all fines coming to the hands of the Board of Trade under this Act shall be paid into the receipt of Her Majesty's Exchequer in such manner as the

Treasury may direct, and shall be carried to and form part of the Consolidated Fund of the United Kingdom.

Fees, salaries, and costs.

39 & 40 Vict. c. 80, (*part of*) s. 39.—On and after the first day of January one thousand eight hundred and seventy-seven all fees payable in respect of the survey or measurement of ships under the Merchant Shipping Acts, 1854 to 1876, or in respect of any services performed by any person employed under the authority of the Passengers Act, 1855, shall continue to be paid to the superintendent of a mercantile marine office at such times and in such manner as the Board of Trade from time to time direct, but shall be paid into the receipt of Her Majesty's Exchequer in such manner as the Treasury from time to time direct, and shall be carried to and form part of the Consolidated Fund of the United Kingdom.

Returns to Board of Trade.

12. All consular officers, and all officers of customs abroad, and all local marine boards and superintendents of mercantile marine offices, shall make and send to the Board of Trade such returns or reports on any matter relating to British merchant shipping or seamen as such Board requires; and all superintendents of mercantile marine offices shall, whenever required by the Board of Trade, produce to such Board or to its officers all official log-books and other documents which, in pursuance of this Act, are delivered to them.

Officers of Board of Trade, naval officers, consuls, the Registrar General of Seamen, officers of customs, and superintendents may inspect documents and muster crews.

13. Every officer of the Board of Trade, and every commissioned officer of any of Her Majesty's ships on full pay, and every British consular officer, and the Registrar-general of Shipping and Seamen and his assistant, and every chief officer of customs in any place in Her Majesty's dominions, and every superintendent of a mercantile marine office, may in cases where he has reason to suspect that the provisions of this Act or the laws for the time being relating to merchant seamen and to navigation are not complied with, exercise the following powers; (that is to say,)

He may require the owner, master, or any of the crew of any British ship to produce any official log-books or other documents relating to such crew or any member thereof in their respective possession or control:

He may require any such master to produce a list of all persons on board his ship, and take copies of such official log-books, or documents, or of any part thereof:

He may muster the crew of any such ship:

§§ 13-15.

He may summon the master to appear and give any explanation concerning such ship or her crew or the said official log-books or documents :

Penalty for refusal or neglect.

And if upon requisition duly made by any person so authorised in that behalf as aforesaid, any person refuses or neglects to produce any such official log-book or document as he is hereinbefore required to produce, or to allow the same to be inspected or copied as aforesaid, or impedes any such muster of a crew as aforesaid, or refuses or neglects to give any explanation which he is hereinbefore required to give, or knowingly misleads or deceives any person hereinbefore authorised to demand any such explanation, he shall for each such offence incur a penalty not exceeding 20*l.*

Inspectors.

Board of Trade may appoint inspectors to report on—

14. The Board of Trade may from time to time, whenever it seems expedient to them so to do, appoint any person, as an inspector, to report to them upon the following matters; (that is to say,)

Accidents.

(1.) Upon the nature and causes of any accident or damage which any ship has sustained or caused, or is alleged to have sustained or caused :

Compliance with this Act.

(2.) Whether the provisions of this Act, or any regulations made under or by virtue of this Act, have been complied with :

Efficiency of ships.

(3.) Whether the hull and machinery of any steam-ship are sufficient and in good condition.

Powers of inspectors.

15. Every such inspector as aforesaid shall have the following powers ; (that is to say,)

Inspection of ships.

(1.) He may go on board any ship, and may inspect the same or any part thereof, or any of the machinery, boats, equipments, or articles on board thereof to which the provisions of this Act apply, not unnecessarily detaining or delaying her from proceeding on any voyage :

Inspection of premises.

(2.) He may enter and inspect any premises the entry or inspection of which appears to him to be requisite for the purpose of the report which he is directed to make :

Summons to attend him.

(3.) He may, by summons under his hand, require the attend-

ance of all such persons as he thinks fit to call before him and examine for such purpose, and may require answers or returns to any inquiries he thinks fit to make :

(4.) He may require and enforce the production of all books, papers, or documents which he considers important for such purpose : Production of books.

(5.) He may administer oaths, or may, in lieu of requiring or administering an oath, require every person examined by him to make and subscribe a declaration of the truth of the statements made by him in his examination : Oaths.

And every witness so summoned as aforesaid shall be allowed such expenses as would be allowed to any witness attending on subpœna to give evidence before any court of record, or if in Scotland, to any witness attending on citation the Court of Justiciary ; and in case of any dispute as to the amount of such expenses the same shall be referred by the inspector to one of the masters of Her Majesty's Court of Queen's Bench in England or Ireland, or to the Queen's and Lord Treasurer's Remembrancer in Scotland, who, on a request made to him for that purpose under the hand of the said inspector, shall ascertain and certify the proper amount of such expenses ; and every person who refuses to attend as a witness before any such inspector, after having been required so to do in the manner hereby directed, and after having had a tender made to him of the expenses (if any) to which he is entitled as aforesaid, or who refuses or neglects to make any answer, or to give any return, or to produce any document in his possession, or to make or subscribe any declarations which any such inspector is hereby empowered to require, shall for each such offence incur a penalty not exceeding 10*l.* Witnesses to be allowed expenses. Penalty for refusing to give evidence.

16. Every person who wilfully impedes any such inspector appointed by the Board of Trade as aforesaid in the execution of his duty, whether on board any ship or elsewhere, shall incur a penalty not exceeding ten pounds, and may be seized and detained by such inspector or other person, or by any person or persons whom he may call to his assistance, until such offender can be conveniently taken before some justice of the peace or other officer having proper jurisdiction. Penalty for obstructing inspectors in the execution of their duty.

§§ 16-18.

Board of Trade may sue in name of its officers.

36 & 37 Vict. c. 85, s. 31.—In any legal proceedings under the Merchant Shipping Acts, 1854 to 1876, the Board of Trade may take proceedings in the name of any of their officers.

PART II.

BRITISH SHIPS: THEIR OWNERSHIP, MEASUREMENT, AND REGISTRY.

Application.

Application of Part II. of Act.

17. The Second Part of this Act shall apply to the whole of Her Majesty's dominions.

Description and Ownership of British Ships.

Description and ownership of British ships.

18. No ship shall be deemed to be a British ship unless she belongs wholly to owners of the following description; (that is to say,)

(1.) Natural-born British subjects:

Provided that no natural born subject who has taken the oath of allegiance to any foreign sovereign or state shall be entitled to be such owner as aforesaid, unless he has subsequently to taking such last-mentioned oath taken the oath of allegiance to Her Majesty, and is and continues to be during the whole period of his so being an owner resident in some place within Her Majesty's dominions, or if not so resident, member of a British factory, or partner in a house actually carrying on business in the United Kingdom or in some other place within Her Majesty's dominions:

(2.) Persons made denizens by letters of denization, or naturalised by or pursuant to any Act of the Imperial Legislature, or by or pursuant to any Act or Ordinance of the proper legislative authority in any British possession:

§ 18.

Provided that such persons are and continue to be during the whole period of their so being owners resident in some place within Her Majesty's dominions, or if not so resident, members of a British factory, or partners in a house actually carrying on business in the United Kingdom or in some other place within Her Majesty's dominions, and have taken the oath of allegiance to Her Majesty subsequently to the period of their being so made denizens or naturalised:

(3.) Bodies corporate established under, subject to the laws of, and having their principal place of business in the United Kingdom or some British possession.

Who are natural born British subjects.

The children of all natural born British subjects, born out of the ligeance of Her Majesty shall be deemed and taken to be natural born subjects of this kingdom (*a*), unless the father was, at the time of the child's birth, outlawed, or attainted for treason (*b*). And all persons born out of the ligeance of the Crown of England, whose fathers are natural born British subjects by virtue of 4 Geo. II. c. 21, are also natural born British subjects (*c*). Thus two generations may be born abroad, and still retain their rights as citizens of this country. The wives of British subjects are subjects of the same state as their husbands (*d*).

Naturalisation.

Certificate of naturalisation.

By the "Naturalisation Act, 1870" (*e*), s. 7, an alien who has resided in the United Kingdom for a term of not less than five years, and intends, when naturalised, to reside in the United Kingdom, or to serve the Crown, may apply to a Secretary of State for a certificate of naturalisation. The Secretary of State may with or without assigning any reason, give or or withhold the certificate as he thinks proper.

An alien to whom such a certificate is granted shall, in the United Kingdom, be entitled to all political and other rights, powers, and privileges, and be subject to all obligations to which a natural-born British subject is entitled or subject in the United Kingdom, with this qualification that he shall not, when within the limits of the foreign state of which he was a subject previously to obtaining his certificate of naturalisation, be deemed to be a British subject, unless he has ceased to be a subject of that state in pursuance of the laws thereof, or in pursuance of a treaty to that effect. By s. 14 of the same Act "Nothing in the Act contained shall qualify an alien to be the owner of a British ship."

Saving as to British ships.

Forfeiture by unqualified owner.

If any unqualified person acquires as owner any interest, either legal or beneficial, in a ship using a British flag and assuming the British

(*a*) 7 Anne, c. 5, s. 3; and 4 Geo. II. c. 21, s. 1.
(*b*) 4 Geo. II. c. 21, s. 2.
(*c*) 13 Geo. III. c. 21, s. 1.
(*d*) 33 & 34 Vict. c. 14, s. 10, sub-s. (1).
(*e*) 33 & 34 Vict. c. 14.

§§ 18, 19.

character, such interest shall be forfeited to Her Majesty (see s. 103, p. 94), unless he acquires the interest by the death of an owner, or the marriage of a female owner, in which case he must within four weeks apply to the Court of Admiralty to decree a sale of such interest (see ss. 62 to 64, p. 64.)

British ships with certain exceptions must be registered.

19. Every British ship must be registered in manner hereinafter mentioned, except,

(1.) Ships duly registered before this Act comes into operation:

(2.) Ships not exceeding fifteen tons burden employed solely in navigation on the rivers or coasts of the United Kingdom, or on the rivers or coasts of some British possession within which the managing owners of such ships are resident:

(3.) Ships not exceeding thirty tons burden, and not having a whole or fixed deck, and employed solely in fishing or trading coastwise on the shores of Newfoundland or parts adjacent thereto, or in the gulf of St. Lawrence, or on such portion of the coasts of Canada, Nova Scotia, or New Brunswick as lie bordering on such gulf.

Not British ships unless registered.

And no ship hereby required to be registered shall, unless registered, be recognised as a British ship; and no officer of customs shall grant a clearance or transire to any ship hereby required to be registered for the purpose of enabling her to proceed to sea as a British ship, unless the master of such ship, upon being required so to do, produces to him such certificate of registry as is hereinafter mentioned; and if such ship attempts to proceed to sea as a British ship without a clearance or transire, such officer may detain such ship until such certificate is produced to him.

Effect of non-registration.

Neglect in registering a vessel is most fatal. If she sails under the British flag without being registered, she will not be recognised as a British ship, and will not be entitled to any benefits, privileges, advantages, or protection usually enjoyed by British ships, but she will remain subject to the payment of dues, and to the liability to pains and penalties as if she were a British ship (see s. 106, p. 96).

Variance between registered and actual name.

A slight variance between a vessel's actual name and the name under which she is registered, will not cause the loss of her British character; as, for instance, if she is called "The City of Brussels," and is registered as "The City of Bruxelles." But this must occur by *bonâ fide* mistake, and must not occasion any difficulty in identifying the ship (*f*). The

(*f*) *Bell* v. *Bank of London*, 3 H. & N. 730.

registered owner has absolute power to dispose of the vessel, subject to 25 & 26 Vict. c. 63, s. 3, which provides for equitable interests (see under s. 43, p. 43). If an owner is not registered, although this may prevent him from receiving the benefits arising from the ship, yet it does not follow that he is to be exempt from the losses which may be sustained in that capacity (*g*). He cannot plead his own laches or neglect as an excuse (*h*).

Power of disposal.

Unregistered owner not free from liability.

When a person having no title to a ship procures it to be registered in his name, the Court will compel him to retransfer it to the rightful owner, and account for the earnings, even though there has been no fraud (*i*). The Courts will sometimes interpose to rectify a *bonâ fide* mistake in the register (*k*).

Measurement of Tonnage.

Tonnage deck; feet; Decimals.

20. Throughout the following rules the tonnage deck shall be taken to be the upper deck in ships which have less than three decks, and to be the second deck from below in all other ships; and in carrying such rules into effect all measurements shall be taken in feet and fractions of feet, and all fractions of feet shall be expressed in decimals.

The kind of upper deck meant by this Act is a continuous deck from stem to stern, fastened down and watertight, sealing up the cylinder formed between the two decks, and making it a fit place for the stowage of cargo; and unless the deck is such, the space enclosed between it and the deck below shall not be reckoned in the tonnage (*l*).

Rule I.

For ships to be registered and other ships of which the hold is clear.

21. The tonnage of every ship to be registered, with the exceptions mentioned in the next section, shall previously to her being registered be ascertained by the following rule, hereinafter called Rule I.: and the tonnage of every ship to which such rule can be applied, whether she is about to be registered or not, shall be ascertained by the same rule:

Lengths.

(1.) Measure the length of the ship in a straight line along the upper side of the tonnage deck from the inside of the inner plank (average thickness) at the side of the stem to the inside of the midship stern timber or plank there, as the case may be (average thickness), deducting from this length what is due to the rake of the bow in

(*g*) *The Nostra Signora de los Dolores*, 1 Dods. Ad. 297.
(*h*) *The Spirit of the Ocean*, 34 L. J. Ad. 74.
(*i*) *Holderness* v. *Lamport*, 29 Beav. 133; 30 L. J. Ch. 489; *The Perseverance*, 2 C. Rob. 239.
(*k*) *Bell* v. *Blyth*, L. R. 4 Ch. 136; *The Rose*, L. R. 4 A. & E. 6; *Orr* v *Dickinson*, 1 Johns. 1.
(*l*) *The Lord Advocate* v. *The Clyde Navigation Co.*, 2 Asp. Mar. Law Cas. (H. of L.) 502.

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the thickness of the deck, and what is due to the rake of the stern timber in the thickness of the deck, and also what is due to the rake of the stern timber in one third of the round of the beam ; divide the length so taken into the number of equal parts required by the following table, according to the class in such table to which the ship belongs ;

TABLE.

Class 1. Ships of which the tonnage deck is according to the above measurement 50 feet long or under, into 4 equal parts :

„ 2. Ships of which the tonnage deck is according to the above measurement above 50 feet long and not exceeding 120, into 6 equal parts :

„ 3. Ships of which the tonnage deck is according to the above measurement above 120 feet long and not exceeding 180, into 8 equal parts :

„ 4. Ships of which the tonnage deck is according to the above measurement above 180 feet long and not exceeding 225, into 10 equal parts :

„ 5. Ships of which the tonnage deck is according to the above measurement above 225 feet long, into 12 equal parts :

Transverse areas.

(2.) Then, the hold being first sufficiently cleared to admit of the required depths and breadths being properly taken, find the transverse area of such ship at each point of division of the length as follows :—Measure the depth at each point of division, from a point at a distance of one third of the round of the beam below such deck, or, in case of a break, below a line stretched in continuation thereof, to the upper side of the floor timber at the inside of the limber strake, after deducting the average thickness of the ceiling which is between the bilge planks and limber strake ; then, if the depth at the midship division of the length do not exceed sixteen feet, divide each depth into four equal parts ; then measure the inside horizontal breadth at each of the three points of division, and also at the upper and lower points of the depth, extending each measurement to the average

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thickness of that part of the ceiling which is between the points of measurement; number these breadths from above (*i.e.* numbering the upper breadth one, and so on down to the lowest breadth); multiply the second and fourth by four, and the third by two; add these products together, and to the sum add the first breadth and the fifth; multiply the quantity thus obtained by one third of the common interval between the breadths, and the product shall be deemed the transverse area; but if the midship depth exceed sixteen feet, divide each depth into six equal parts instead of four, and measure as before directed the horizontal breadths at the five points of division, and also at the upper and lower points of the depth; number them from above as before; multiply the second, fourth, and sixth by four, and the third and fifth by two; add these products together, and to the sum add the first breadth and the seventh; multiply the quantity thus obtained by one third of the common interval between the breadths, and the product shall be deemed the transverse area:

Computation from areas.

(3.) Having thus ascertained the transverse area at each point of division of the length of the ship as required by the above table, proceed to ascertain the register tonnage of the ship in the following manner:—Number the areas successively 1, 2, 3, &c., No. 1 being at the extreme limit of the length at the bow, and the last No. at the extreme limit of the length at the stern; then, whether the length be divided according to the table into four or twelve parts as in Classes 1 and 5, or any intermediate number as in Classes 2, 3, and 4, multiply the second and every even numbered area by four, and the third and every odd numbered area (except the first and last) by two; add these products together, and to the sum add the first and last if they yield anything; multiply the quantity thus obtained by one third of the common interval between the areas, and the product will be the cubical contents of the space under the tonnage deck; divide this product by 100, and the quotient being the tonnage under the tonnage deck shall be deemed to be the register tonnage of the ship,

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subject to the additions and deductions hereinafter mentioned.

Poop and any other closed-in space.

(4.) If there be a break, a poop, or any other permanent closed-in space on the upper deck, available for cargo or stores, or for the berthing or accommodation of passengers or crew, the tonnage of such space shall be ascertained as follows:—Measure the internal mean length of such space in feet, and divide it into two equal parts; measure at the middle of its height three inside breadths, namely, one at each end and the other at the middle of the length; then to the sum of the end breadths add four times the middle breadth, and multiply the whole sum by one-third of the common interval between the breadths; the product will give the mean horizontal area of such space; then measure the mean height, and multiply by it the mean horizontal area; divide the product by 100, and the quotient shall be deemed to be the tonnage of such space, and shall be added to the tonnage under the tonnage deck, ascertained as aforesaid, subject to the following provisoes; first, that nothing shall be added for a closed-in space solely appropriated to the berthing of the crew, unless such space exceeds one-twentieth of the remaining tonnage of the ship, and in case of such excess the excess only shall be added; and, secondly, that nothing shall be added in respect of any building erected for the shelter of deck passengers, and approved by the Board of Trade.

In case of two or more decks.

(5.) If the ship has a third deck commonly called a spar deck, the tonnage of the space between it and the tonnage deck shall be ascertained as follows:—Measure in feet the inside length of the space at the middle of its height from the plank at the side of the stem to the lining on the timbers at the stern, and divide the length into the same number of equal parts into which the length of the tonnage deck is divided as above directed; measure (also at the middle of its height) the inside breadth of the space at each of the points of division, also the breadth of the stem and the breadth at the stern; number them successively 1, 2, 3, &c., commencing at the stem; multiply the second and all the other even-

numbered breadths by four, and the third and all the other odd-numbered breadths (except the first and last) by two ; to the sum of these products add the first and last breadths ; multiply the whole sum by one-third of the common interval between the breadths, and the result will give in superficial feet the mean horizontal area of such space ; measure the mean height of such space, and multiply by it the mean horizontal area, and the product will be the cubical contents of the space ; divide this product by 100, and the quotient shall be deemed to be the tonnage of such space, and shall be added to the other tonnage of the ship ascertained as aforesaid ; and if the ship has more than three decks, the tonnage of each space between decks above the tonnage deck shall be severally ascertained in manner above described, and shall be added to the tonnage of the ship ascertained as aforesaid.

RULE II.

22. Ships which, requiring to be measured for any purpose other than registry, have cargo on board, and ships which, requiring to be measured for the purpose of registry, cannot be measured by the rule above given, shall be measured by the following rule, hereinafter called Rule II. :

For ships not requiring registry with cargo on board.

(1.) Measure the length on the upper deck from the outside of the outer plank at the stem to the aftside of the stern post, deducting therefrom the distance between the aftside of the stern post and the rabbet of the stern post at the point where the counter plank crosses it ; measure also the greatest breadth of the ship to the outside of the outer planking or wales, and then, having first marked on the outside of the ship on both sides thereof the height of the upper deck at the ship's sides, girt the ship at the greatest breadth in a direction perpendicular to the keel from the height so marked on the outside of the ship on the one side to the height so marked on the other side by passing a chain under the keel ; to half the girth thus taken add half the main breadth ; square the sum ; multiply the result by the length of the ship taken as aforesaid ; then multiply this product by the factor ·0018 (eighteen ten-thousandths) in the case of ships built of wood, and ·0021 (twenty-one ten-thousandths) in the case of ships built of iron, and the

Length.

Breadth.

Girting of the ship.

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product shall be deemed the register tonnage of the ship subject to the additions and deductions hereinafter mentioned.

Poop and other closed-in spaces on upper deck.

(2.) If there be a break, a poop, or other closed-in space on the upper deck, the tonnage of such space shall be ascertained by multiplying together the mean length, breadth, and depth of such space, and dividing the product by 100, and the quotient so obtained shall be deemed to be the tonnage of such space, and shall, subject to the deduction for a closed-in space appropriated to the crew as mentioned in Rule I., be added to the tonnage of the ship ascertained as aforesaid.

Ships measured under Rule II. may be measured under Rule I.

18 & 19 Vict. c. 91, s. 14.—The owner of any ship which is measured under Rule II., contained in the twenty-second section of the "Merchant Shipping Act, 1854," may, at any subsequent period, apply to the Board of Trade to have the said ship remeasured under Rule I., contained in the twenty-first section of the same Act, and the Board of Trade may thereupon, upon payment of such fee, not exceeding seven shillings and sixpence for each Transverse section as they may authorise, direct the said ship to be remeasured accordingly, and the number denoting the register tonnage shall be altered accordingly.

Transfer to Board of Trade of duties of Commissioners of Customs with respect to measurement of ships.

35 & 36 Vict. c. 73, s. 3.—The 23rd, 27th, 28th, and 29th sections of the "Merchant Shipping Act, 1854," and the 14th section of the "Merchant Shipping Act Amendment Act, 1855," and the 4th section of the "Merchant Shipping Act, 1871," shall be read and construed as if the Board of Trade were therein named instead of the Commissioners of Customs.

The Board of Trade has been substituted for the Commissioners of Customs in all the above-mentioned sections.

RULE III.

Allowance for engine room in steamers.

23. In every ship propelled by steam or other power requiring engine-room, an allowance shall be made for the space occupied by the propelling power, and the amount so allowed shall be deducted from the gross tonnage of the ship ascertained as aforesaid, and the remainder shall be deemed to be the register tonnage of such ship; and such deduction shall be estimated as follows (that is to say):

To be rateable in ordinary steamers.

(*a.*) As regards ships propelled by paddle wheels in which the tonnage of the space solely occupied by and necessary for the proper working of the boilers and machinery is above twenty per cent. and under thirty per cent. of the gross

§ 23.

tonnage of the ship, such deduction shall be thirty-seven one-hundredths of such gross tonnage; and in ships propelled by screws in which the tonnage of such space is above thirteen per cent. and under twenty per cent. of such gross tonnage, such deduction shall be thirty-two one-hundredths of such gross tonnage:

May be measured where the space is unusually large or small.

(*b*). As regards all other ships, the deduction shall, if the Board of Trade and the owner both agree thereto, be estimated in the same manner; but either they or he may in their or his discretion require the space to be measured and the deduction estimated accordingly; and whenever such measurement is so required the deduction shall consist of the tonnage of the space actually occupied by or required to be enclosed for the proper working of the boilers and machinery, with the addition in the case of ships propelled by paddle-wheels of one half, and in the case of ships propelled by screws of three-fourths of the tonnage of such space; and the measurement and use of such space shall be governed by the following rules (that is to say):

Mode of measurement.

(1.) Measure the mean depth of the space from its crown to the ceiling at the limber strake, measure also three, or, if necessary, more than three breadths of the space at the middle of its depth, taking one of such measurements at each end, and another at the middle of the length; take the mean of such breadths; measure also the mean length of the space between the foremost and aftermost bulkheads or limits of its length, excluding such parts, if any, as are not actually occupied by or required for the proper working of the machinery; multiply together these three dimensions of length, breadth, and depth, and the product will be the cubical contents of the space below the crown; then find the cubical contents of the space or spaces, if any, above the crown aforesaid, which are framed in for the machinery or for the admission of light and air, by multiplying together the length, depth, and breadth thereof; add such contents to the cubical contents of the space below the crown; divide the sum by 100, and the result shall be deemed to be the tonnage of the said space:

In case of

(2.) If in any ship in which the space aforesaid is to be

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separate compartments.

measured the engines and boilers are fitted in separate compartments, the contents of each shall be measured severally in like manner, according to the above rules, and the sum of their several results shall be deemed to be the tonnage of the said space:

Shaft-trunk of screw steamer.

(3.) In the case of screw steamers in which the space aforesaid is to be measured, the contents of the shaft trunk shall be added to and deemed to form part of such space, and shall be ascertained by multiplying together the mean length, breadth, and depth of the trunk, and dividing the product by 100:

Alteration of engine room.

(4.) If in any ship in which the space aforesaid is to be measured, any alteration be made in the length or capacity of such space, or if any cabins be fitted in such space, such ship shall be deemed to be a ship not registered until remeasurement:

Penalty for carrying goods in such space.

(5.) If in any ship in which the space aforesaid is to be measured, any goods or stores are stowed or carried in such space, the master and owner shall each be liable to a penalty not exceeding 100*l.*

RULE IV.

Open ships, how measured.

24. In ascertaining the tonnage of open ships the upper edge of the upper strake is to form the boundary line of measurement, and the depths shall be taken from an athwartship line, extended from upper edge to upper edge of the said strake at each division of the length.

25. *Repealed by* 34 & 35 Vict. c. 110, s. 12.

Tonnage when once ascertained to be ever after deemed the tonnage.

26. Whenever the tonnage of any ship has been ascertained and registered in accordance with the provisions of this Act, the same shall thenceforth be deemed to be the tonnage of such ship, and be repeated in every subsequent registry thereof, unless any alteration is made in the form or capacity of such ship, or unless it is discovered that the tonnage of such ship has been erroneously computed; and in either of such cases such ship shall be remeasured, and her tonnage determined and registered according to the rules hereinbefore contained in that behalf.

Remeasurement of ships already registered may be made, but not to be compulsory.

27. The rules for the measurement of tonnage herein contained shall not make it necessary to alter the present registered tonnage of any British ship registered before this Act comes into operation; but if the owner of any such ship desires to have the same remeasured according to such rules, he may apply to

the Board of Trade for the purpose, and such Board shall thereupon, and on payment of such reasonable charge for the expenses of remeasurement, not exceeding the sum of seven shillings and sixpence for each transverse section, as they may authorise, direct such remeasurement to be made, and such ship shall thereupon be remeasured according to such rules as aforesaid, or according to such of them as may be applicable; and the number denoting the register tonnage shall be altered accordingly.

Power to remeasure engine rooms improperly extended.

28. If it appears to the Board of Trade that in any steamship measured before this Act comes into operation, store-rooms or coal-bunkers have been introduced into or thrown across the engine-room, so that the deduction from the tonnage on account of the engine-room is larger than it ought to be, the said Board may, if they think fit, direct such engine-room to be remeasured according to the rules in force before this Act comes into operation, excluding the space occupied by such store-rooms or coal-bunkers, or may, if the owners so desire, cause the ship to be remeasured according to the rules herein-before contained, and subject to the conditions contained in the last preceding section; and after remeasurement the Board of Trade shall cause the ship to be registered anew or the registry thereof to be altered, as the case may require.

Officers may be appointed and regulations made for measurement of ships.

29. The Board of Trade may, with the sanction of the Treasury, appoint such persons to superintend the survey and admeasurement of ships as they think fit; and may make such regulations for that purpose as may be necessary; and also, make such modifications and alterations as from time to time become necessary in the tonnage rules hereby prescribed, in order to the more accurate and uniform application thereof, and the effectual carrying out of the principle of admeasurement therein adopted.

Under this section the Board of Trade cannot make any rules of measurement that will alter the allowance for space occupied by the propelling power in steam vessels. The principle of admeasurement must be maintained intact (*m*). As to the fees to be paid for measurements, see under s. 19 of the "Passengers' Act, 1855," p. 487.

Tonnage rates under local

25 & 26 Vict. c. 63, s. 4.—Any body corporate or persons having power to levy tonnage rates on ships may, if they think

(m) *City of Dublin Steam Packet Co.* v. *Thompson*, L. R. 1 C. P. 355.

§§ 29, 30.

Acts may be levied on the registered tonnage.

fit, with the consent of the Board of Trade, levy such tonnage rates upon the registered tonnage of the ships as determined by the rules for the measurement of tonnage for the time being in force under the Principal Act notwithstanding that the local Act or Acts under which such rates are levied provides for levying the same upon some different system of tonnage measurement.

Ships of foreign countries adopting the rule for measurement of tonnage need not be remeasured in this country.

25 & 26 Vict. c. 63, s. 60.—Whenever it is made to appear to Her Majesty that the rules concerning the measurement of tonnage of merchant ships for the time being in force under the Principal Act have been adopted by the Government of any foreign country, and are in force in that country, it shall be lawful for Her Majesty by Order in Council, to direct that the ships of such foreign country shall be deemed to be of the tonnage denoted in their certificates of registry or other national papers; and thereupon it shall no longer be necessary for such ships to be remeasured in any port or place in Her Majesty's dominions, but such ships shall be deemed to be of the tonnage denoted in their certificates of registry or other papers, in the same manner, to the same extent, and for the same purposes in, to, and for which the tonnage denoted in the certificates of registry of British ships is deemed to be the tonnage of such ships.

Registry of British Ships.

Registrars of British ships.

30. The following persons are required to register British ships, and shall be deemed registrars for the purposes of this Act (that is to say):

In United Kingdom.

(1.) At any port or other place in the United Kingdom or Isle of Man approved by the commissioners of customs for the registry of ships, the collector, comptroller, or other principal officer of customs for the time being:

In Channel Islands.

(2.) In the islands of Guernsey and Jersey, the principal officers of Her Majesty's customs, together with the governor, lieutenant-governor, or other person administering the government of such islands respectively:

In Malta, &c.

(3.) In Malta, Gibraltar, and Heligoland, the governor, lieutenant-governor, or other person administering the government of such places respectively:

In India.

(4.) At any port or place so approved as aforesaid within the limits of the charter, but not under the government of the East India Company, and at which no custom-house is established, the collector of duties, together

with the governor, lieutenant-governor, or other person administering the government:

At Calcutta, &c.

(5.) At the ports of Calcutta, Madras, and Bombay, the master attendants, and at any other port or place so approved as aforesaid within the limits of the charter and under the government of the East India Company, the collector of duties, or any other person of six years standing in the civil service of the said Company who is appointed by any of the governments of the said Company to act for this purpose:

Persons to be registrars.

(6.) At every other port or place so approved as aforesaid within Her Majesty's dominions abroad, the collector, comptroller or other principal officer of customs or of navigation laws; or if there is no such officer resident at such port or place, the governor, lieutenant-governor, or other person administering the government of the possession in which such port or place is situate.

Registrars of British ships in British possessions.

32 Vict. c. 11, s. 6.—It shall be lawful for Her Majesty, by Order in Council, from time to time to declare, with respect to the British possession mentioned in the order, the description of persons who are to be registrars of British ships in that British possession, and to revoke any order so made.

After the date specified in the order, or, if no date is specified, after the date of the proclamation of the order in the British possession, the order shall have effect as if it were contained in section thirty of the Merchant Shipping Act, 1854.

Substitution of governor abroad for commissioners of customs, and of consul for justice.

31. The governor, lieutenant-governor, or other person administering the government in any British possession where any ship is registered under the authority of this Act shall, with regard to the performance of any act or thing relating to the registry of a ship or of any interest therein, be considered in all respects as occupying the place of the commissioners of customs; and any British consular officer shall, in any place where there is no justice of the peace, be authorised to take any declaration hereby required or permitted to be made in the presence of a justice of the peace.

Registrar to keep register books.

32. Every registrar shall keep a book, to be called "The Register Book," and enter therein the particulars hereinafter required to be registered.

Port of

33. The port or place at which any British ship is registered

§§ 33, 34. for the time being shall be considered her port of registry or the port to which she belongs.

registry of British ships.

Ship's managing owner or manager to be registered.

39 & 40 Vict. c. 80, s. 36.—The name and address of the managing owner for the time being of every British ship registered at any port or place in the United Kingdom shall be registered at the custom house of the ship's port of registry.

Where there is not a managing owner there shall be so registered the name of the ship's husband or other person to whom the management of the ship is entrusted by or on behalf of the owner; and any person whose name is so registered shall, for the purposes of the Merchant Shipping Acts, 1854 to 1876, be under the same obligations, and subject to the same liabilities, as if he were the managing owner.

Penalty for default.

If default is made in complying with this section the owner shall be liable, or if there be more owners than one, each owner shall be liable in proportion to his interest in the ship, to a penalty not exceeding in the whole one hundred pounds each time the ship leaves any port in the United Kingdom.

Her Majesty may, by Order in Council, declare certain foreign ports ports of registry.

36 & 37 Vict. c. 85, s. 29.—Where, in accordance with the Foreign Jurisdiction Acts, Her Majesty exercises jurisdiction within any port out of Her Majesty's dominions, it shall be lawful for Her Majesty, by Order in Council, to declare such port a port of registry (in this Act referred to as a foreign port of registry), and by the same or any subsequent Order in Council to declare the description of persons who are to be the registrars of British ships at such foreign port of registry, and to make regulations with respect to the registry of British ships thereat.

Upon such Order coming into operation it shall have effect as if it were enacted in the Merchant Shipping Acts, 1854 to 1873, and shall, subject to any exceptions and regulations contained in the Order, apply in the same manner, as near as may be, as if the port mentioned in the Order were an ordinary port of registry.

34. *Repealed by* 34 & 35 Vict. c. 110, s. 12.

Marking of Ships.

Particulars to be marked on British ships.

36 & 37 Vict. c. 85, s. 3.—Every British ship registered after the passing of this Act shall before registry, and every British ship registered before the passing of this Act shall, on or before the first day of January one thousand eight hundred and seventy-four, be permanently and conspicuously marked to the satisfaction of the Board of Trade, as follows:

Name.

Her name shall be marked on each of her bows, and her name and the name of her port of registry shall be marked on her stern, on a dark ground in white or

yellow letters, or on a light ground in black letters, such letters to be of a length not less than four inches, and of proportionate breadth :

Number.

Her official number and the number denoting her registered tonnage shall be cut in on her main beam :

Draught of water.

A scale of feet denoting her draught of water shall be marked on each side of her stem and of her stern-post in Roman capital letters or in figures, not less than six inches in length, the lower line of such letters or figures to coincide with the draught line denoted thereby. Such letters or figures shall be marked by being cut in and painted white or yellow on a dark ground, or in such other way as the Board of Trade may from time to time approve.

Exemption.

The Board of Trade may, however, exempt any class of ships from the requirements of this section or any of them.

Penalty for inaccurate scale of draught of water.

If the scale of feet showing the ship's draught of water is in any respect inaccurate, so as to be likely to mislead, the owner of the ship shall incur a penalty not exceeding one hundred pounds.

Marks to be permanent.

The marks required by this section shall be permanently continued, and no alteration shall be made therein, except in the event of any of the particulars thereby denoted being altered in the manner provided by the Merchant Shipping Acts, 1854 to 1876.

Penalty for neglect or non-compliance.

Any owner or master of a British ship who neglects to cause his ship to be marked as aforesaid, or to keep her so marked, and any person who conceals, removes, alters, defaces, or obliterates, or suffers any person under his control to conceal, remove, alter, deface, or obliterate any of the said marks, except in the event aforesaid, or except for the purpose of escaping capture by an enemy, shall for each offence incur a penalty not exceeding one hundred pounds, and any officer of customs on receipt of a certificate from a surveyor or inspector of the Board of Trade that a ship is insufficiently or inaccurately marked, may detain the same until the insufficiency or inaccuracy has been remedied.

Fishing vessels.

Provided that no fishing vessel duly registered, lettered, and numbered in pursuance of the Sea Fisheries Act, 1868, shall be required to have her name and port of registry marked under this section.

Provided also, that if any registered British ship is not within a port of the United Kingdom at any time before the first day of January one thousand eight hundred and seventy four, she shall be marked as by this section required within one month after her next return to a British port of registry subsequent to that date.

Deck and Load Lines.

§ 34. 39 & 40 Vict. c. 80, s. 25.—Every British ship (except ships under eighty tons register employed solely in the coasting trade, ships employed solely in fishing, and pleasure yachts) shall be permanently and conspicuously marked with lines of not less than twelve inches in length and one inch in breadth, painted longitudinally on each side amidships, or as near thereto as practicable, and indicating the position of each deck which is above water.

Marking of deck-lines.

The upper edge of each of these lines shall be level with the upper side of the deck plank next the waterway at the place of marking.

The lines shall be white or yellow on a dark ground, or black on a light ground.

Marking of load-line.

39 & 40 Vict. c. 80, s. 26.—With respect to the marking of a load-line on British ships the following provisions shall have effect:

(1.) The owner of every British ship (except ships under eighty tons register employed solely in the coasting trade, ships employed solely in fishing, and pleasure yachts) shall, before entering his ship outwards from any port in the United Kingdom upon any voyage for which he is required so to enter her, or, if that is not practicable, as soon after as may be, mark upon each of her sides amidships, or as near thereto as is practicable, in white or yellow on a dark ground, or in black on a light ground, a circular disc, twelve inches in diameter, with a horizontal line eighteen inches in length, drawn through its centre:

(2.) The centre of this disc shall indicate the maximum load-line in salt water to which the owner intends to load the ship for that voyage:

(3.) He shall also, upon so entering her, insert in the form of entry delivered to the collector or other principal officer of customs, a statement in writing of the distance in feet and inches between the centre of this disc and the upper edge of each of the lines indicating the position of the ship's decks which is above that centre:

In case of default.

(4.) If default is made in delivering this statement in the case of any ship, any officer of customs may refuse to enter the ship outwards:

(5.) The master of the ship shall enter a copy of this statement in the agreement with the crew before it is signed by any member of the crew, and no superintendent of any mercantile marine office shall proceed with the engagement of the crew until this entry is made:

(6.) The master of the ship shall also enter a copy of this statement in the official log book:

(7.) When a ship has been marked as by this section required, she shall be kept so marked until her next return to a port of discharge in the United Kingdom.

These provisions of the "Merchant Shipping Act, 1876," are quite new. It is left to the owner's discretion where he will mark his load-line disc, as he is presumed to know the character of his ship, and the depth to which she may be safely loaded. Seamen will be able to estimate for themselves whether the disc is placed too low, by knowing the distance between the centre of the disc and the decks above it. The penalty is only inflicted if the ship is loaded so as to submerge the centre of the disc.

Marking of load-line in case of coasting vessels.

39 & 40 Vict. c. 80, s. 27.—With respect to the marking of a load-line on British ships employed in the coasting trade, the following provisions shall have effect :—

(1.) The owner of every British ship employed in the coasting trade on the coasts of the United Kingdom (except ships under eighty tons register employed solely in that trade), shall before proceeding to sea from any port, mark upon each of her sides amidships, or as near thereto as is practicable, in white or yellow on a dark ground, or in black on a light ground, a circular disc twelve inches in diameter, with a horizontal line eighteen inches in length drawn through its centre :

(2.) The centre of this disc shall indicate the maximum load-line in salt water to which the owner intends to load the ship, until notice is given of an alteration :

(3.) He shall also once in every twelve months, immediately before the ship proceeds to sea, send or deliver to the collector or other principal officer of customs of the port of registry of the ship a statement in writing of the distance in feet and inches between the centre of the disc and the upper edge of each of the lines indicating the position of the ship's decks which is above that centre :

(4.) The owner, before the ship proceeds to sea after any renewal or alteration of the disc, shall send or deliver to the collector or other principal officer of customs of the port of registry of the ship, notice in writing of such renewal or alteration, together with such statement in writing as before mentioned of the distance between the centre of the disc and the upper edge of each of the deck-lines :

(5.) If default is made in sending or delivering any notice or statement required by this section to be sent or delivered, the owner shall be liable to a penalty not exceeding 100*l.*

(6.) When a ship has been marked as by this section re-

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quired, she shall be kept so marked until notice is given of an alteration.

Penalty for offences in relation to marks on ships.

39 & 40 Vict. c. 80, s. 28.—Any owner or master of a British ship who neglects to cause his ship to be marked as by this Act required, or to keep her so marked, or who allows the ship to be so loaded as to submerge in salt water the centre of the disc, and any person who conceals, removes, alters, defaces, or obliterates, or suffers any person under his control to conceal, remove, alter, deface, or obliterate, any of the said marks, except in the event of the particulars thereby denoted being lawfully altered, or except for the purpose of escaping capture by an enemy, shall for each offence incur a penalty not exceeding 100*l.*

If any of the marks required by this Act is in any respect inaccurate, so as to be likely to mislead, the owner of the ship shall incur a penalty not exceeding 100*l.*

Names of Ships.

Rules to be observed in naming of British ships.

34 & 35 Vict. c. 110, s. 6.—With respect to the names of British ships, the following rules shall be observed:

(1.) A ship shall not be described by any name other than that by which she is for the time being registered:

Change of name.

(2.) No change shall be made in the name of a ship without the previous permission of the Board of Trade signified in writing under their seal, or under the hand of one of their secretaries or assistant secretaries. Upon such permission being granted, the ship's name shall forthwith be altered in the register book, in the ship's certificate of registry, and on her bows and stern accordingly:

If name is changed without permission.

(3.) If in any case it is shown to the satisfaction of the Board of Trade that the name of any ship has been changed without such permission as aforesaid, they shall direct that her name be altered into that which she bore before such change, and the name shall be altered in the register book, in the ship's certificate of registry, and on her bows and stern accordingly:

When a ship has ceased to be registered.

(4.) Where a ship having once been registered has ceased to be so registered, no person, unless ignorant of such previous registry (proof whereof shall lie on him), shall apply to register, and no registrar shall knowingly register, such ship, except by the name by which she was previously registered, unless with the permission of the Board of Trade granted as aforesaid.

Every person who acts or suffers any person under his control to act in contravention of this section, or who admits to do, or suffers any person under his control to omit to do, anything

required by this section, shall for each offence incur a penalty not exceeding one hundred pounds, and any principal officer of customs may detain the ship until the provisions of this section are complied with.

Application for change of name.

Application for a change of name shall be made in writing to the Board of Trade. If the Board are of opinion that the application is made on reasonable grounds they may entertain the same, and shall thereupon require notice thereof to be published in such form and manner as they think fit.

Rules as to names of foreign ships placed on British register.

36 & 37 Vict. c. 85, s. 5.—Where a foreign ship, not having at any previous time been registered as a British ship, becomes a British ship, no person shall apply to register, and no registrar shall knowingly register such ship, except by the name which she bore as a foreign ship immediately before becoming a British ship, unless with the permission of the Board of Trade granted in manner directed by section six of the Merchant Shipping Act, 1871.

Any person who acts or suffers any person under his control to act in contravention of this section, shall for each offence incur a penalty not exceeding one hundred pounds.

Application for registry, by whom to be made.

35. Every application for the registry of a ship shall in the case of individuals be made by the person requiring to be registered as owner, or by some one or more of such persons if more than one, or by his or their duly authorised agent, and in the case of bodies corporate by their duly authorised agent; the authority of such agent, if appointed by individuals, to be testified by some writing under the hands of the appointors, and if appointed by a body corporate, by some instrument under the common seal of such body corporate.

Survey of ship.

36. Before registry, the ship shall be surveyed by a person duly appointed under this Act; and such surveyor shall grant a certificate in the form marked A. in the schedule hereto, specifying her tonnage, build, and such other particulars descriptive of the identity of the ship as may from time to time be required by the Board of Trade; and such certificate shall be delivered to the registrar before registry.

FORM A.

CERTIFICATE OF SURVEYOR.

Name of Ship.	British or Foreign Built.	Port of Registry.	How Propelled.
			By Steam or Sails, and if by Steam, whether by Paddles or Screw.

Number of decks .		Build . .	*Carvel or clincher.*
Number of masts .		Gallery . .	*Description of.*
Rigging . . .	*Nature of, and whether standing or running bowsprit.*	Head . .	*Kind of.*
Stern . . .	*Round, square, or other description.*	Framework. .	*Wood or other Material.*

Measurements.	Feet.	Tenths.
Length from the forepart of stem under the bowsprit to the aft-side of the head of the sternpost		
Main breadth to outside of plank		
Depth in hold from tonnage-deck to ceiling at midships . .		

Tonnage.	No. of Tons.
Tonnage under tonnage-deck	
Closed-in spaces above the tonnage-deck, if any; viz.,	
Space or spaces between decks	
Poop	
Roundhouse	
Other inclosed spaces, if any, naming them	
Total	

*Additional Particulars for Steamers.**	Tons.	
Deduction for space required for propelling power (say whether $\frac{32}{100}$ths or $\frac{33}{100}$ths, or as measured)		
Length of engine-room (if measured)	Feet.	Tenths.
Engines	No. of Engines.	
Combined Power (estimated horse-power)	No. of horses-power.	

Register tonnage (after making deduction for space for propelling power in steamers)* . . .

I, the undersigned *A. B.* of , having surveyed the above-named ship, hereby certify that the above particulars are true.

Dated at (Signed)

the day of 18 .

This form is exempt from stamp duty (see s. 9, p. 10).

* Omit this part if she has no steam-power.

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37. The following rules shall be observed with respect to entries in the register book; (that is to say).

Rules as to entries in register book

(1.) The property in a ship shall be divided into sixty-four shares:

Division of ship.

(2.) Subject to the provisions with respect to joint owners or owners by transmission hereinafter contained, not more than thirty-two individuals shall be entitled to be registered at the same time as owners of any one ship; but this rule shall not affect the beneficial title of any number of persons or of any company represented by or claiming under or through any registered owner or joint owner. (*See s.* 43, *p.* 43).

Number of owners.

(3.) No person shall be entitled to be registered as owner of any fractional part of a share in a ship; but any number of persons, not exceeding five, may be registered as joint owners of a ship or of a share or shares therein:

Joint owners

(4.) Joint owners shall be considered as constituting one person only as regards the foregoing rule relating to the number of persons entitled to be registered as owners, and shall not be entitled to dispose in severalty of any interest in any ship or in any share or shares therein in respect of which they are registered:

(5.) A body corporate may be registered as owner by its corporate name.

Bodies corporate.

Mutual Relation of Part Owners.

Part owners of a ship are not partners, in England they are tenants in common (*o*). This rule does not hold good absolutely in America, where there may be a special partnership in regard to a particular voyage (*p*). Part owners have each a distinct, although undivided, interest in the property; and neither can transfer or dispose of the whole of it, or act for the others in relation thereto; but merely for his own share and to the extent of his own several right and interest (*q*). There is no right of survivorship among part owners, and on the death of one, his executors or administrators become tenants in common of the ship with the survivors (*r*).

Part owners not partners.

Each has a distinct interest.

No survivorship.

(*o*) *Ex parte Young*, 2 V. & B. 242; *Ex parte Harrison*, 2 Rose, 76; Lindley on Partnership (3rd edit.), 167.

(*p*) *Mumford* v. *Nicoll*, 20 Johns. (Amer. Rep.) 609; Story on Partnership (7th ed.), § 444, p. 690.

(*q*) Com. Dig. *Estate*, K. 1—10; Story on Partnership (6th ed.), § 89, p. 140.

(*r*) Abbott on Shipping (11th ed.), 71; *Jeffreys* v. *Small*, 1 Vern. 217; *Mumford* v. *Nicoll*, 4 Johns, Ch. R. (Amer. Rep.), 522; S. C. 20 Johns. (Amer. Rep.), 611.

§§ 37, 38.

When all agree in the employment of the ship.

When they disagree.

When the ship is employed by all the part owners, or by some of them, but not against the will of the others, they all share the gross earnings, and contribute to the expenses incurred in obtaining them (*s*). But before there is any division of profits among them, the gross freight or earnings must be applied in payment of the expenses of the voyage yielding them, including the cost of repairs and outfit for that voyage (*t*).

It may and often does happen, that part owners differ among themselves with regard to the mode in which the vessel is to be employed; and it has been said that ships were "originally invented for use and profit, not for pleasure or delight; to plough the sea, not to lie by the walls" (*u*). When the owners disagree, and the majority wish to employ her in a certain way, in order to prevent the ship from "lying by the walls," it has been the practice of the Admiralty Court, from very remote times, to take a stipulation from those who desire to send the ship on the voyage, in a sum equal to the value of the shares of those who disapprove of the adventure, either to bring back and restore to them the ship, or to pay them the value of their shares (*x*). The dissentients are not then entitled to share in the profits of the voyage (*y*), nor are they liable to contribute to its losses (*z*). This security may be taken upon a warrant obtained by the minority to arrest the ship. See sec. 515, p. 433, as to money paid for damage caused by the ship.

Declaration of ownership by individual owner.

38. No person shall be entitled to be registered as owner of a ship or any share therein until he has made and subscribed a declaration in the form marked B. in the schedule hereto, referring to the ship as described in the certificate of the surveyor, and containing the following particulars; (that is to say,)

Qualification.

(1.) A statement of his qualification to be an owner of a share in a British ship:

Build of ship.

(2.) A statement of the time when and the place where such ship was built, or (if the ship is foreign built, and the time and place of building not known,) a statement that she is foreign-built, and that he does not know the time or place of her building; and, in addition thereto, in the case of a foreign ship, a statement of her foreign name, or (in the case of a ship condemned) a state-

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(*s*) *Strelly* v. *Winson*, 1 Vern. 296, as corrected by *Horn* v. *Gilpin*, Amb. 255.

(*t*) Lindley on Partnership (3rd ed.), 167; *Green* v. *Briggs*, 6 H. A. 695; *Lindsay* v. *Gibbs*, 22 Beav. 522; 3 De G. & J. 690; *Alexander* v. *Simms*, 18 Beav. 80.

(*u*) Molloy, bk. 2, c. 1, § 2.

(*x*) Abbott on Shipping (11th ed.), 73; *The Apollo*, 1 Hagg. Ad. 311; *Willing* v. *Blight*, 2 Pet. Ad. (Amer. Rep.) 288; *The Marengo*, 1 Sprague (Amer. Rep.), 506.

(*y*) *Anon.* 2 Ch. Ca. 36; *Boson* v. *Sandford*, Carthew, 63; *Davis* v. *Johnson*, 4 Sim. 539.

(*z*) *Horn* v. *Gilpin*, Ambl. 255.

ment of the time, place, and court at and by which she was condemned :

(3.) A statement of the name of the master : Master.

(4.) A statement of the number of shares in such ship of which he is entitled to be registered as owner : Number of shares.

(5.) A denial that, to the best of his knowledge and belief, any unqualified person or body of persons is entitled as owner to any legal or beneficial interest in such ship or any share therein : No unqualified owners.

The above declaration of ownership shall be made and subscribed in the presence of the registrar if the declarant reside within five miles of the custom-house of the port of registry, but if beyond that distance in the presence of any registrar or of any justice of the peace.

The beneficial interests contemplated in subs. (5), are the equitable rights provided for by ss. 62, 63, 64 (*n*). See 25 & 26 Vict. c. 63, s. 3, under s. 43, p. 43, as to meaning of beneficial interest.

FORM No. 2 (SUBSTITUTED FOR SCHEDULE B).

Resident or non-resident owner or transferee } *Natural-born subject.*

DECLARATION OF OWNERSHIP BY INDIVIDUAL.

Official Number of Ship.	Name of Ship.	No., Date, and Port of Registry.
	*	

No., Date, and Port of previous Registry (if any).

Whether British or Foreign Built.	Whether a Sailing or Steam Ship : and if a Steam Ship, how propelled.	Where Built.	When Built.	Name and Address of Builders.
†				

* If foreign built, add "and her foreign name is ."
† If British, insert "BRITISH." "Built at in the county of on the

(*n*) *Liverpool Borough Bank* v. *Turner*, 1 Johns. & H. 169 ; 2 De G. F. & J. 502 ; *Ex parte Yallop*, 15 Ves. 60.

		Feet.	Tenths.
Number of decks .	Length from fore part of stem, under the bowsprit, to the aft side of the head of the stern post		
Number of masts .	Main breadth to outside of plank . . .		
Rigged . . .	Depth in hold from tonnage deck to ceiling at midships		
Stern . . .	Depth in hold from upper deck to ceiling at midships, in the case of three decks and upwards		
Build	Length of engine-room (if any) . . .		
Galleries . . .			
Head			
Framework . .			

PARTICULARS OF ENGINES (IF ANY).

No. of Engines.	Description.	Whether British or Foreign made.	When made.	Name and Address of Makers.	Diameter of Cylinders.	Length of Stroke.	No. of Horses' Power (combined).

PARTICULARS OF TONNAGE.

GROSS TONNAGE.	No. of Tons.	DEDUCTIONS ALLOWED.	No. of Tons.
Under tonnage deck . . .		On account of space required for propelling power . . .	
Closed-in spaces above the tonnage deck, if any		On account of spaces occupied by seamen or apprentices, and appropriated to their use, and kept free from goods or stores of every kind, not being the personal property of the crew . . .	
Space or spaces between decks		These spaces are the following, viz. :—	
Poop.			
Forecastle			
Roundhouse			
Other closed-in spaces, if any, as follows :—			
Gross tonnage . .			
Deductions, as per contra . .			
Registered tonnage .		Total deductions . .	

I, the undersigned of , declare as follows :—I am a natural-born British subject, born at in the county of and have never taken

day of 18 ." If foreign, insert "FOREIGN." "Built at " [*naming the place and country*] "on the day of 18 ;" *or* if foreign, and place of build unknown, insert "FOREIGN." "Time and place of build are unknown to the declarant ;" *or* if a condemned ship, insert "Condemned by the Court of" *naming the Court*] "on the day of ."

the oath of allegiance to any foreign State. The above general description of the ship is correct. , whose certificate of competency or service is No. , is the master of the said ship. I am entitled to be registered as owner of shares of the said ship. To the best of my knowledge and belief, no person or body of persons, other than such persons or bodies of persons as are by the "Merchant Shipping Act, 1854," qualified to be owners of British ships, is entitled as owner, to any interest whatever, either legal or beneficial, in the said ship. And I make this solemn declaration conscientiously believing the same to be true.

Made and subscribed the day of 18 , by the above named in the presence of

‡

‡ If in the presence of a registrar he will add to his signature "Registrar of the port of ." If in the presence of a magistrate his description should be added, as, for example, "Justice of the peace acting in and for" [*naming the county, city, borough, &c., as the case may be*].

No stamp duty is required for this form (see s. 9, p. 10). As to the penalty for a false declaration, see s. 103, sub-s. (4), p. 94.

Declaration of ownership by body corporate.

39. No body corporate shall be entitled to be registered as owner of a ship or of any share therein until the secretary or other duly appointed public officer of such body corporate has made and subscribed in the presence of the registrar of the port of registry a declaration in the form marked C. in the schedule hereto, referring to the ship as described in the certificate of the surveyor, and containing the following particulars; (that is to say,)

Qualification.

(1.) A statement of such circumstances of the constitution and business of such body corporate as prove it to be qualified to own a British ship.

Particulars of build.

(2.) A statement of the time when and the place where such ship was built, or (if the ship is foreign-built, and the time and place of building unknown,) a statement that she is foreign-built, and that he does not know the time or place of her building; and, in addition thereto, in the case of a foreign ship, a statement of her foreign name, or (in the case of a ship condemned) a statement of the time, place, and court at and by which she was condemned:

Master.

(3.) A statement of the name of the master:

No. of shares.

(4.) A statement of the number of shares in such ship of which such body corporate is owner:

No unqualified owners.

(5.) A denial that, to the best of his knowledge and belief, any unqualified person or body of persons is entitled as owner to any legal or beneficial interest in such ship or any share therein.

FORM No. 8 (SUBSTITUTED FOR SCHEDULE C).

DECLARATION OF OWNERSHIP ON BEHALF OF A BODY CORPORATE AS OWNER.

Official Number of Ship.	Name of Ship.	No., Date, and Port of Registry.
	*	

No., Date, and Port of previous Registry (if any).

Whether British or Foreign Built.	Whether a Sailing or Steam Ship; and if a Steam Ship, how propelled.	Where Built.	When Built.	Name and Address of Builders.
†				

		Feet.	Tenths.
Number of decks .	Length from fore part of stem, under the bowsprit, to the aft side of the head of the stern post		
Number of masts .			
Rigged . . .	Main breadth to outside of plank . . .		
Stern . . .	Depth in hold from tonnage deck to ceiling at midships		
Build			
Galleries . . .	Depth in hold from upper deck to ceiling at midships, in the case of three decks and upwards		
Head			
Framework . .	Length of engine room (if any) . .		

PARTICULARS OF ENGINES (IF ANY).

No. of Engines.	Description.	Whether British or Foreign made.	When made.	Name and Address of Makers.	Diameter of Cylinders.	Length of Stroke.	No of Horses' Power (combined).

* If foreign built, add "and her name is ."

† If British, insert "BRITISH." "Built at in the county of on the day of 18 ." If foreign, insert "FOREIGN." "Built at " [*naming the place and country*] "on the day of 18 ;" *or* if foreign, and place of build unknown, insert "FOREIGN." "Time and place of build are unknown to the declarant:" *or* if a condemned ship, insert "Condemned by the Court of" [*naming the Court*] "on the day of ."

PARTICULARS OF TONNAGE.

GROSS TONNAGE.	No. of Tons.	DEDUCTIONS ALLOWED.	No. of Tons.
Under tonnage deck . . .		On account of space required for propelling power . . .	
Closed-in spaces above the tonnage deck, if any		On account of spaces occupied by seamen or apprentices, and appropriated to their use, and kept free from goods or stores of every kind, not being the personal property of the crew . . .	
Space or spaces between decks		These spaces are the following, viz. :—	
Poop			
Forecastle			
Roundhouse			
Other closed-in spaces, if any, as follows :—			
Gross tonnage . .			
Deductions, as per contra . .			
Registered tonnage .		Total deductions . .	

I, the undersigned *A. B.* of in the county of , [*Secretary*], *or* [*duly appointed public officer*], of the Company, declare as follows :

The said Company was incorporated by or by virtue of

an Act of Parliament of the United Kingdom [*cite the year of the reign in which the Act was passed, its chapter and title.*] *or* a charter granted by Her Majesty, and dated the day of *or* an Act or Ordinance of the Legislature of [*cite the year in which the Act or Ordinance was passed, its chapter and title.*] *or* the Act 7 & 8 Vict. c. 110, from the day of , being the date of the certificate of complete registration.

The above general description of the ship is correct. , whose certificate of competency or service is No. , is master of the said ship.

The said Company is entitled to be registered as owner of shares in the said ship.

To the best of my knowledge and belief no person or body of persons other than such persons or bodies of persons as are by the "Merchant Shipping Act, 1854," qualified to be owners of British ships, is entitled as owner to any interest whatever, either legal or beneficial, in the said ship.

And I make this solemn declaration, conscientiously believing the same to be true.

(Signed)

Dated at
the day of , 18 .

Made and subscribed by the above-named *A. B.*
in the presence of me

(Signed) [*Name of Registrar.*]

No stamp duty is required for this form (see s. 9, p. 10).

§§ 40–42.

Evidence to be produced on registry.

40. Upon the first registry of a ship there shall, in addition to the declaration of ownership, be produced the following evidence; (that is to say,)

Certificate of British built ship.

(1.) In the case of a British-built ship, a certificate (which the builder is hereby required to grant under his hand) containing a true account of the proper denomination and of the tonnage of such ship as estimated by him and of the time when and of the place where such ship was built, together with the name of the party (if any) on whose account he has built the same, and if any sale or sales have taken place, the bill or bills of sale under which the ship or share therein has become vested in the party requiring to be registered as owner:

Of foreign built ship.

(2.) In the case of a foreign-built ship, the same evidence as in the case of a British-built ship, unless the person requiring to be registered as owner, or, in the case of a body corporate, the duly appointed officer, declares that the time or place of her building is unknown, or that the builder's certificate cannot be procured, in which case there shall be required only the bill or bills of sale under which the ship or share therein became vested in the party requiring to be registered as owner thereof:

Condemnation.

(3.) In the case of a ship condemned by any competent court, an official copy of the condemnation of such ship.

Penalty on builder for false certificate.

41. If any builder wilfully makes a false statement in any certificate hereby required to be granted by him he shall for every such offence incur a penalty not exceeding 100*l.*

Particulars of entry in register book.

42. As soon as the foregoing requisites to the due registry of a ship have been complied with, the registrar shall enter in the register book the following particulars relating to such ship; (that is to say,)

Name and port.

(1.) The name of the ship and of the port to which she belongs:

Tonnage, build, description.

(2.) The details as to her tonnage, build, and description comprised in the certificate hereinbefore directed to be given by the surveyor:

Origin.

(3.) The several particulars as to her origin stated in the declaration or declarations of ownership:

Owners.

(4.) The names and descriptions of her registered owner or owners, and if there is more than one such owner, the proportions in which they are interested in such ship.

A register is not a document required by the law of nations as expressive of a ship's national character (*o*). (With respect to national character, see s. 102, p. 93.)

False declaration of ownership made a misdemeanor.

18 & 19 Vict. c. 91, s. 9.—Any person who, in any declaration made in the presence of or produced to any registrar of shipping, in pursuance of the second part of the Merchant Shipping Act, 1854, or in any documents or other evidence produced to such registrar, wilfully makes, or assists in making or procures to be made, any false statement concerning the title to or the ownership of or the interests existing in any ship, or any share or shares in any ship, or who utters, produces, or makes use of any declaration or document containing any such false statement, knowing the same to be false, shall be guilty of a misdemeanor.

No notice taken of trusts.

43. No notice of any trust, express, implied, or constructive, shall be entered in the register-book, or receivable by the registrar; and, subject to any rights and powers appearing by the register-book to be vested in any other party, the registered owner of any ship or share therein shall have power absolutely to dispose in manner hereinafter mentioned of such ship or share, and to give effectual receipts for any money paid or advanced by way of consideration.

Equities not excluded by Merchant Shipping Act.

25 & 26 Vict. c. 63, s. 3.—It is hereby declared that the expression "Beneficial Interest," whenever used in the second part of the Principal Act, includes interests arising under contract and other equitable interests; and the intention of the said Act is that, without prejudice to the provisions contained in the said Act for preventing notice of trusts from being entered in the Register-book or received by the registrar, and without prejudice to the powers of disposition and of giving receipts conferred by the said Act on registered owners and mortgagees, and without prejudice to the provisions contained in the said Act relating to the exclusion of unqualified persons from the ownership of British ships, equities may be enforced against owners and mortgagees of ships in respect of their interest therein, in the same manner as equities may be enforced against them in respect of any other personal property.

The former state of the law rigidly excluded all equitable interests, and frequently caused very great hardship (*p*). The "interests arising

(*o*) *Le Cheminant* v. *Pearson*, 4 Taunt. 367.
(*p*) *The Spirit of the Ocean*, 34 L. J. Ad. 75.

§§ 43, 44.

Interests arising under contract.

Infant purchaser.

Unregistered mortgagee.

under contract" mentioned in this section, are executory contracts of sale or mortgage, not yet perfected by the execution of the statutory instruments. Thus, if an infant purchases a vessel, his name cannot appear on the register as the owner, but the vendor will be the infant's trustee in equity, until, on his coming of age, he is enabled to make the declaration of ownership required by s. 38 (*q*) (see also s. 99, p. 92). Again, if a registered mortgagee deposits his mortgage deed with a creditor, and does not register the assignment, this section gives the holder of the deed an equitable mortgage, which he may enforce, notwithstanding s. 71 (*r*). Persons "beneficially interested," unless they are mortgagees, are subject to all the pecuniary penalties imposed by these Acts on owners (see s. 100, p. 93).

Certificate of Registry.

Certificate of registry to be granted.

44. Upon the completion of the registry of any ship the registrar shall grant a certificate of registry in the form marked D. in the schedule hereto, comprising the following particulars; (that is to say)—

Name. (1.) The name of the ship and of the port to which she belongs:

Tonnage. (2.) The details as to her tonnage, build, and description comprised in the certificate hereinbefore directed to be given by the surveyor:

Master. (3.) The name of her master:

Origin. (4.) The several particulars as to her origin stated in the declaration or declarations of ownership:

Owners. (5.) The names and descriptions of her registered owner or owners, and if there is more than one such owner, the proportions in which they are respectively interested, indorsed upon such certificate.

(*q*) *Stapleton* v. *Haymen*, 2 H. & C. 918; 1 Mar. Law Cas. 416.
(*r*) *Lacon* v. *Liffen*, 32 L. J. Ch. 25; 4 Giff. 75.

The following form is substituted for that given in Schedule D. :—

CERTIFICATE OF BRITISH REGISTRY.

PARTICULARS OF SHIP.

Official Number of Ship.	Name of Ship.	No., Date, and Port of Registry.

No., Date, and Port of previous Registry (if any).

Whether British or Foreign Built.	Whether a Sailing or Steam Ship; and if a Steam Ship, how propelled.	Where Built.	When Built.	Name and Address of Builders.

		Feet.	Tenths.
Number of decks .	Length from the fore part of stem, under the bowsprit, to the aft side of the head of the stern post		
Number of masts .			
Rigged . . .	Main breadth to outside of plank . .		
Stern	Depth in hold from tonnage deck to ceiling at midships		
Build			
Galleries . . .	Depth in hold from upper deck to ceiling at midships, in the case of ships of three decks and upwards		
Head			
Framework . .	Length of engine room (if any) . . .		

PARTICULARS OF ENGINES (IF ANY).

No. of Engines.	Description.	Whether British or Foreign made.	When made.	Name and Address of Makers.	Diameter of Cylinders.	Length of Stroke.	No. of Horses' Power (combined).

PARTICULARS OF TONNAGE.

GROSS TONNAGE.	In Register Tons.	In Cubic Metres.	DEDUCTIONS ALLOWED.	No. of Tons.
Under tonnage deck . .			On account of space required for propelling power . .	
Closed-in spaces above the tonnage deck, if any . . .			On account of spaces occupied by seamen or apprentices, and appropriated to their use, and kept free from goods or stores of every kind, not being the personal property of the crew	
Space or spaces between decks			These spaces are the following, viz. :—	
Poop				
Forecastle				
Roundhouse				
Other closed-in spaces, if any, as follows :—				
Gross tonnage . .				
Deductions, as per contra . .				
Registered tonnage .			Total deductions . .	

I, the undersigned *A. B.*, Registrar of the Port of , hereby certify, that the ship, the description of which is prefixed to this my certificate, has been duly surveyed, and that the above description is true ; that , whose certificate of competency or service is No. , is the master of the said ship ; and that the name , residence, and description of the owner and number of sixty-fourth shares held by are as follows :—

Name, Residence, and Occupation of the Owner.	Number of Sixty-fourth Shares.

Dated at the day of ,
one thousand eight hundred and

Registrar of Shipping.

Notice.—The certificate of registry is not a document of title. It does not necessarily contain notice of *all* changes of ownership, and in no case does it contain an official record of any mortgages affecting the ship.

In case of any *change of ownership* it is important for the protection of the interests of all parties that the change should be *registered* according to law.

Should the vessel be lost, sold to foreigners, or be broken up, notice thereof together with the certificate of registry, if in existence, should immediately be given to the Registrar of Shipping at the port of registry, under a penalty of £100 for default.

For further information, apply to the Registrar of Shipping at any Custom House.

Terminable Certificates in Colonies.

31 & 32 Vict. c. 129, s. 1.—The governor or officer lawfully administering the government of any British possession may from time to time, with the approval of one of Her Majesty's Principal Secretaries of State, make regulations providing that on an application for registration under the Merchant Shipping Act, 1854, in that possession of any ship not exceeding sixty tons burden, the registrar may grant, in lieu of a certificate of registry as required by that Act, a certificate of registry to be terminable at the end of six months from the granting thereof, or of any longer period; and all certificates of registry granted under any such regulations shall be in such form and shall have effect subject to such conditions as the regulations prescribe.

Grant of terminable certificates of registry, subject to conditions in colonies.

31 & 32 Vict. c. 129, s. 2.—Notwithstanding anything in the Merchant Shipping Act, 1854, or in any other Act, any ship to which a certificate is granted under any such regulations shall, while such certificate is in force, and in relation to all things done or omitted during that period, be deemed a registered British ship.

Ship to be deemed registered.

45. Whenever any change takes place in the registered ownership of any ship, then, if such change occurs at a time when the ship is at her port of registry, the master shall forthwith deliver the certificate of registry to the registrar, and he shall indorse thereon a memorandum of such change; but if such change occurs during the absence of the ship from her port of registry, then upon her first return to such port, the master shall deliver the certificate of registry to the registrar, and he shall indorse thereon a like memorandum of the change; or if she previously arrives at any port where there is a British registrar, such registrar shall, upon being advised by the registrar of her port of registry of the change having taken place, indorse a like memorandum thereof on the certificate of registry, and may for that purpose require the certificate to be delivered to him, so that the ship be not thereby detained; and any master who fails to deliver to the registrar the certificate of registry as hereinbefore required, shall incur a penalty not exceeding 100*l.*

Change of owners to be indorsed on certificate of registry.

46. Whenever the master of any British registered ship is changed, the following persons, that is to say, if such change is made in consequence of the sentence of any naval court, the presiding officer of such court, but if the change takes place

Change of master to be indorsed on certificate of registry.

§§ 46, 48. from any other cause, the registrar, or if there is no registrar, the British consular officer resident at the port where such change takes place, shall indorse on the certificate of registry a memorandum of such change, and subscribe his name to such indorsement, and forthwith report the change of master to the Registrar General of Shipping and Seamen; and the officers of customs at any port situate within Her Majesty's dominions, may refuse to admit any person to do any act at such port as master of any British ship, unless his name is inserted in, or indorsed upon, the certificate of registry of such ship as the last appointed master thereof.

Transfer to the Registrar General of Seamen of duties of Commissioners of Customs with respect to registry of ships.

35 & 36 Vict. c. 73, s. 4.—The 46th, 54th, 92nd, and 94th sections of the Merchant Shipping Act, 1854, shall be read and construed as if the Registrar General of Seamen were therein named instead of the Commissioners of Customs, and the returns required to be transmitted by the said 94th section of the Merchant Shipping Act, 1854, shall be transferred to the Registrar General of Seamen, and not to the custom house in London, and the Registrar General of Seamen shall be called the Registrar General of Shipping and Seamen.

These changes have been made in all the above-mentioned sections, without reference being made in each case to this enactment.

Power to grant new certificate.

47. The registrar may, with the sanction of the commissioners of customs, upon the delivery up to him of the former certificate of registry, grant a new certificate in the place of the one so delivered up.

Provision in case of loss of certificate.

48. In the event of the certificate of registry of any ship being mislaid, lost, or destroyed, if such event occurs at any port in the United Kingdom, the ship being registered in the United Kingdom, or at any port in any British possession, the ship being registered in the same British possession, then the registrar of her port of registry shall grant a new certificate of registry in lieu of, and as a substitute for, her original certificate of registry; but if such event occurs elsewhere, the master, or some other person having knowledge of the circumstances, shall make a declaration before the registrar of any port having a British registrar at which such ship is at the time, or first arrives after such mislaying, loss, or destruction; and such declaration shall state the facts of the case, and the names and descriptions of the registered owners of such ship,

to the best of the declarant's knowledge and belief; and the registrar shall thereupon grant a provisional certificate as near to the form appointed by this Act as circumstances permit; and shall insert therein a statement of the circumstances under which such provisional certificate is granted.

Provisional certificate to be delivered up.

49. Every such provisional certificate shall, within ten days after the first subsequent arrival of the ship at her port of discharge in the United Kingdom, if registered in the United Kingdom, or if registered elsewhere, at her port of discharge in the British possession within which her port of registry is situate, be delivered up to the registrar thereof, who shall thereupon grant a new one, as near to the form appointed by this Act as circumstances permit; and if the master neglects to deliver up such certificate within such time, he shall incur a penalty not exceeding 50*l.*

Penalty.

Custody of certificate.

50. The certificate of registry shall be used only for the lawful navigation of the ship, and shall not be subject to detention by reason of any title, lien, charge, or interest whatsoever which any owner, mortgagee, or other person may have, or claim to have, on or in the ship described in such certificate; and if any person whatever, whether interested or not in the ship, refuses on request to deliver up such certificate when in his possession or under his control, to the person for the time being entitled to the custody thereof for the purposes of such lawful navigation as aforesaid, or to any registrar, officer of the customs, or other person legally entitled to require such delivery, it shall be lawful for any justice, by warrant under his hand and seal, or for any court capable of taking cognisance of such matter, to cause the person so refusing to appear before him and to be examined touching such refusal; and unless it is proved to the satisfaction of such justice or court that there was reasonable cause for such refusal, the offender shall incur a penalty not exceeding 100*l.*; but if it is made to appear to such justice or court that the certificate is lost, the party complained of shall be discharged, and such justice or court shall thereupon certify that the certificate of registry is lost.

Delivery of certificate may be required. Penalty for detention.

Certificate cannot be pledged

This section was intended to be a direct prohibition of any dealing with the certificate for any other purpose than the navigation of the ship, and it therefore necessarily prohibits the pledging of the certificate. Hence, where a creditor threatened to arrest a ship, and the owner gave

§§ 50-53.

Detention of it by a creditor, unlawful.

To whom it should be delivered.

The master should keep it.

There are no liens on the certificate.

the certificate to the creditor, as a pledge that the ship should not go to sea, and afterwards redemanded the certificate, which the creditor refused to give up, it was held that the detention of the certificate was unlawful, and that the creditor must pay damages arising from his having prevented the ship going to sea (*a*). When there are several owners of a ship, the Court of Admiralty will, in a suit for possession, grant a monition to show cause why the certificate should not be delivered to the owner having the majority of interest (*b*).

A ship had arrived in port, and before she was discharged, the owner demanded the certificate from the master, intending to dismiss him, but not telling him of this. The master refused to give it up, and was held not liable for the penalty. If the owner had said, "I dismiss you, and require you to give up the certificate," the master would then have incurred the penalty by refusing (*c*). The master has no lien on the certificate for his wages and disbursements, nor have shipbrokers any lien on it for advances to the owner for the use of the ship (*d*).

Mode of proceeding if detaining party abscond.

51. If the person charged with such detainer or refusal is proved to have absconded, so that the warrant of the justice or process of the court cannot be served upon him, or if he persists in his refusal to deliver the certificate, such justice or court shall certify the fact, and the same proceedings may then be taken as in the case of a certificate of registry mislaid, lost, or destroyed, or as near thereto as circumstances permit.

Penalty for using improper certificate.

52. If the master or owner of any ship uses or attempts to use for the navigation of such ship a certificate of registry not legally granted in respect of such ship, he shall be guilty of a misdemeanor, and it shall be lawful for any commissioned officer on full pay in the military or naval service of Her Majesty, or any British officer of customs, or any British consular officer, to seize and detain such ship, and to bring her for adjudication before the High Court of Admiralty in England or Ireland, or any court having admiralty jurisdiction in Her Majesty's dominions; and if such court is of opinion that such use or attempt at use has taken place, it shall pronounce such ship, with her tackle, apparel, and furniture, to be forfeited to Her Majesty, and may award such portion of the proceeds arising from the sale of such ship as it may think just to the officer so bringing in the same for adjudication.

Certificate of ship lost or ceasing to be British to be delivered up.

53. If any registered ship is either actually or constructively lost, taken by the enemy, burnt, or broken up, or if by reason

(*a*) *Wiley* v. *Craufurd*, 4 L. T. N. S. 653.
(*b*) *The Frances*, 2 Dods. Ad. 422.
(*c*) *Arkle* v. *Henzell*, 8 E. & B. 828; 27 L. J. (M. C.) 110.
(*d*) *Gibson* v. *Ingo*, 6 Hare, 112.

of a transfer to any persons not qualified to be owners of British ships, or of any other matter or thing, any such ship as aforesaid ceases to be a British ship, every person who at the time of the occurrence of any of the aforesaid events owns such ship or any share therein shall, immediately upon obtaining knowledge of any such occurrence, if no notice thereof has already been given to the registrar at the port of registry of such ship, give such notice to him, and he shall make an entry thereof in his register book; and, except in cases where the certificate of registry is lost or destroyed, the master of every ship so circumstanced as aforesaid shall immediately, if such event occurs in port, but if the same occurs elsewhere, then within ten days after his arrival in port, deliver the certificate of registry of such ship to the registrar, or, if there be no registrar, to the British consular officer at such port, and such registrar if he is not himself the registrar of her port of registry, or such British consular officer, shall forthwith forward the certificate so delivered to him to the registrar of the port of registry of the ship; and every owner and master who, without reasonable cause, makes default in obeying the provisions of this section shall for each offence incur a penalty not exceeding 100*l*.

Penalty.

54. If any ship becomes the property of persons qualified to be owners of British ships at any foreign port, the British consular officer resident at such port may grant the master of such ship, upon his application, a provisional certificate, stating—

Provisional certificate for ship becoming vested in British owners at foreign port.

The name of the ship;

The time and place of her purchase, and the names of her purchasers;

The name of her master;

The best particulars as to her tonnage, build, and description that he is able to obtain;

And he shall forward a copy of such certificate, at the first convenient opportunity, to the Registrar General of Shipping and Seamen: The certificate so granted shall possess the same force as a certificate of registry until the expiration of six months, or until such earlier time as the ship arrives at some port where there is a British registrar; but upon the expiration of such period, or upon arrival at such port shall be void to all intents.

Transfers and Transmissions.

§ 55. Transfer of ships or shares therein.

55. A registered ship or any share therein, when disposed of to persons qualified to be owners of British ships, shall be transferred by bill of sale; and such bill of sale shall contain such description of the ship as is contained in the certificate of the surveyor, or such other description as may be sufficient to identify the ship to the satisfaction of the registrar, and shall be according to the form marked E. in the schedule hereto, or as near thereto as circumstances permit, and shall be executed by the transferrer in the presence of and be attested by one or more witnesses.

The following form has been substituted by the Commissioners of Customs for that contained in the original Schedule E. It is exempt from stamp duty (see sec. 9, p. 10).

FORM No. 10.

BILL OF SALE.

Official Number of Ship.	Name of Ship.

Port Number and Year of Registry.	Port of Registry.	British or Foreign Built.	How Propelled.	Where Built.	When Built.

		Feet.	Tenths.
Number of decks .	Length from fore part of stem, under the bowsprit, to the aft side of the head of the stern post		
Number of masts .			
Rigged . . .	Main breadth to outside of plank . . .		
Stern	Depth in hold from tonnage deck to ceiling at midships		
Build			
Galleries . . .	Depth in hold from upper deck to ceiling at midships, in the case of three decks and upwards		
Head			
Framework . .	Length of engine room (if any) . . .		

PARTICULARS OF ENGINES (IF ANY).

No. of Engines.	Description.	Whether British or Foreign made.	When made.	Name and Address of Makers.	Diameter of Cylinders.	Length of Stroke.	No. of Horses' Power (combined).

GROSS TONNAGE.	No. of Tons.	DEDUCTIONS ALLOWED.	No. o Tons.
Under tonnage deck . . .		On account of space required for propelling power . . .	
Closed-in spaces above tonnage deck, if any		On account of spaces occupied by seamen or apprentices, appropriated to their use, and kept free from goods and stores of every kind, not being the personal property of the crew . . .	
Space or spaces between decks .		These spaces are the following, viz. —	
Poop			
Forecastle			
Round house			
Other closed-in spaces, if any, as follows.—			
Gross tonnage . .			
Deductions, as per contra . . .			
Registered tonnage .		Total deductions . .	

* in consideration of the sum of paid to† by the receipt whereof is hereby acknowledged, transfer shares in the ship above particularly described, and in her boats, guns, ammunition, small arms, and appurtenances, to the said .

Further‡ the said for§ heirs covenant with the said and‖ assigns, that¶ have power to transfer in manner aforesaid the premises hereinbefore expressed to be transferred, and that the same are free from incumbrances**

In witness whereof ha hereunto subscribed name and affixed seal this day of one thousand eight hundred and

Executed by the above-named
in the presence of

* "I," *or* "we." † "Me," *or* "us." ‡ "I," *or* "we."
§ "Myself and my," *or* "ourselves and our."
‖ "His," "her," *or* "their." ¶ "I," *or* "we."
** If there be any subsisting mortgage, or outstanding certificate of mortgage, add "save as appears by the registry of the said ship."

§ 55. 18 & 19 Vict. c. 91, s. 10.—Shares in ships registered under the said "Merchant Shipping Act, 1854," shall be deemed to be included in the word "stock," as defined by the "Trustee Act, 1850," and the provisions of such last-mentioned Act shall be applicable to such shares accordingly.

Shares in shipping within the Trustee Act, 1850.

Definition of "Stock."

This definition, as given in 13 & 14 Vic. c. 60, s. 2, is,— The word "Stock" shall mean any fund, annuity, or security, transferable in books kept by any company established, or to be established, or transferable by deed alone, or by deed accompanied by other formalities, and any share or interest therein.

Previous Statutes.

In the older statutes, from which this clause was taken (*a*), there are to be found the words "otherwise such transfer shall not be valid or effectual for any purpose whatever, either in law or equity." The omission of these words from this section raised the question as to whether any other mode of transfer was valid. It has now been decided that this section is mandatory, that is, that the legislature intended that ships should be transferred by registered bill of sale, and by no other means (*b*). This was the former policy, and the Act of 1854 is a Consolidation Act, and contains nothing to show a departure from the former policy in this respect. The same reasons apply to mortgages, which can only be made in the prescribed manner (see sec. 66, p. 67).

Bill of sale the only mode of transfer.

Former policy continued.

Application of section 55.

This and the two following sections do not, however, apply to transfers by operation of law, such as the transfer from a testator to his executors, and so on, but relate to transfers under a contract (*c*) (see sec. 58, p. 61).

Equities.

It is now enacted that equities may be enforced against owners and mortgagees of ships in respect of their interest therein, in the same manner as equities may be enforced against them in respect of any other personal property (*d*) (see sec. 43, p. 43). The bill of sale passes the actual property in the ship at common law, as between buyer and seller, even though the transfer is not registered (*e*); registration is a record of the sale, not the sale itself (*f*).

Sale of Ships.

Ships are not ordinary chattels.

By private persons.—Ships are personal property, but are in some respects different from ordinary chattels. They do not pass by delivery, nor does possession prove the title to them; and there is no market overt for ships (*g*). "A bill of sale," said Lord Stowell, "is the proper title to which the maritime courts of all countries look. It is the universal instrument of transfer of ships in the usage of all maritime countries, and in no degree a peculiar title deed or conveyance known only to the law of England. It is what the maritime law expects, what the Court of Admiralty would in its ordinary practice always require, and what the legislature has made absolutely necessary by statute" (*h*).

Bill of sale the universal mode of transfer.

(*a*) 3 & 4 Wm. IV. c. 55, s. 31, and 8 & 9 Vict. c. 89, s. 34.
(*b*) *The Liverpool Borough Bank* v. *Turner*, 1 Johns. & H. 169; on appeal 2 De G. F. & J. 502.
(*c*) *Ex parte Yallop*, 15 Ves. (2nd ed.) 69.
(*d*) 25 & 26 Vict. c. 63, s. 3.
(*e*) *Stapleton* v. *Haymen*, 2 H. & C. 918.
(*f*) *The Spirit of the Ocean*, 34 L. J. (Ad.) 76.
(*g*) *Hooper* v. *Gumm*, L. R. 2 Ch. 290.
(*h*) *The Sisters*, 5 C. Rob. 155; *Weston* v. *Penniman*, 1 Mason (Amer. Rep.) 317; Kent's Commentaries (12th ed., 1873), III. 30.

§ 55.

The bill of sale of a ship must be distinguished from the ordinary bill of sale, which is in reality a species of mortgage (*i*). When the ship sold is in the country of its owner, and delivery of actual possession is possible, such delivery is necessary to give a perfect title to the buyer, in case of the sale of the whole ship (*j*). Without delivery, the sale may be deemed fraudulent (*k*); or the ship may be seized by creditors of the vendor, as being in his reputed ownership, if the vendor becomes bankrupt (*l*). But if the ship is sold while she is at sea, it is sufficient if the purchaser takes possession as soon as may be after her return (*m*). A bill of sale of a ship, though in form absolute, may in some cases operate at law only as a mortgage, and this depends on the intention of the parties (*n*).

Delivery when whole ship is sold.

Sale of ship at sea.

The general rule is, that whoever purchases under an illegal title does so at his own peril, and must take the consequence, both in purchase and in his own subsequent expenditure upon it, of his inattention to his own security (*o*). But several acts of *bonâ fide* transfer, and for valuable consideration, cure antecedent defects of title (*p*).

Defective title.

With respect to the sale of a ship by a competent court, see sec. 62, p. 64, and as to a sale by the master in cases of necessity, and without the owner's authority, see Part III. p. 104.

Other cases of sale.

What Property passes by the Sale of a Ship.

When a ship that is complete and furnished with all the necessary tackle and appliances, is sold, what passes to the vendee in addition to the vessel itself, will depend upon the terms of the particular contract (*q*). And when it is intended to include boats, stores, tackle, ballast, and the other things belonging to her, these should be mentioned in the bill of sale (*r*). "Appurtenances" appears to include all such matters as are incidental to the working of the ship (*s*).

What passes depends on contract.

Boats, etc., should be mentioned.

Appurtenances.

But if a ship is sold before she is finished, it becomes sometimes a matter of difficulty to determine what the purchaser has acquired. As a general rule, when a person contracts with another, that the other shall make, or construct some specific thing, as a carriage, ship, &c., the purchaser acquires no right whatever to the thing until it is completed and delivered (*t*).

Sale of unfinished ship.

When the purchaser has agreed to pay instalments of the purchase-money during the completion of the work, and does pay them, it then becomes a question of fact as to what the intention of the parties was.

Intention a question of fact.

(*i*) The bill of sale of a ship is excepted from the operation of the Bills of Sale Act (17 & 18 Vict. c. 36, s. 7.)

(*j*) Abbott on Shipping (11th ed.) 24.

(*k*) 18 Eliz. c. 5.

(*l*) 32 & 33 Vict. c. 71, s. 15, subs. (5). See Robson on Bankruptcy (2nd ed.) 412.

(*m*) *Atkinson* v. *Maling*, 2 T. R. 462.

(*n*) *Gardner* v. *Cazenove*, 1 H. & N. 423; 26 L. J. Ex. 17.

(*o*) *The Perseverance*, 2 C. Rob. 239.

(*p*) *The Helena*, 4 C. Rob. 4; *The Australia*, 13 Moo. P. C. 132.

(*q*) Maud and Pollock on Merchant Shipping (2nd ed.) 31.

(*r*) Molloy, B. 2, c. 1, s. 8; *Lano* v. *Neate*, 2 Stark. 105; *Kinter's Case*, 1 Leon. 46, 47.

(*s*) *Langton* v. *Horton*, 5 Beav. 9; Abbott on Shipping (11th ed.) 5.

(*t*) *Mucklow* v. *Mangles*, 1 Taunt. 318; *Atkinson* v. *Bell*, 8 B. & C. 277.

§§ 55, 56.

Materials for the ship.

The property does not pass merely by its being manufactured, but only when it is the intention of the parties that it shall pass (*u*). If the parties intend that the property shall pass during construction, the question then is, What is the ship? and not, What is meant for the ship? Those things pass to the purchaser which have been fitted to, and have become part of the ship, as, for instance, a door being upon hinges, even though afterwards removed for convenience. But materials procured by the vendor, and destined to be part of the ship, do not pass to the purchaser if they have not been as yet affixed to the vessel (*x*). In America it has been held, that the fact that certain portions of the contract price are agreed to be paid, and are paid to the builder at specified stages of the work, does not of itself vest any property in the unfinished ship in the person for whom it is being made (*y*).

American law.

Declaration to be made by transferree.

56. No individual shall be entitled to be registered as transferree of a ship or any share therein until he has made a declaration in the form marked F. in the schedule hereto, stating his qualification to be registered as owner of a share in a British ship, and containing a denial similar to the denial hereinbefore required to be contained in a declaration of ownership by an original owner; and no body corporate shall be entitled to be registered as transferree of a ship or any share therein until the secretary or other duly appointed public officer of such body corporate has made a declaration in the orm marked G. in the schedule hereto, stating the name of such body corporate, and such circumstances of its constitution and business as may prove it to be qualified to own a British ship, and containing a denial similar to the denial hereinbefore required to be contained in a declaration of ownership made on behalf of a body corporate: In the case of an individual, the above declaration shall be made, if he reside within five miles of the custom house of the port of registry, in the presence of the registrar, but if beyond that distance in the presence of any registrar or of any justice of the peace; in the case of a body corporate the declaration shall be made in the presence of the registrar of the port of registry.

(*u*) *Wood* v. *Bell*, 6 E. & B. 355; 25 L. J. Q. B. 321.

(*x*) *Wood* v. *Bell*, 6 E. & B. 355; 25 L. J. Q. B. 321; Benjamin on Sales (2nd ed.) 251.

(*y*) *Andrews* v. *Durrant*, 11 New York (Amer.) Rep. 35; *Skull* v. *Shakespeare*, 75 Penn. (Amer.) Rep. 297.

The following forms are now substituted for those originally given in Schedules F. and G. :—

FORM No. 6.

Joint owner or transferree } *Natural-born subject.*

DECLARATION BY A JOINT OWNER OR TRANSFERREE.

Official Number of Ship.	Name of Ship.	No., Date, and Port of Registry.
	*	

No., Date, and Port of previous Registry (if any).

Whether British or Foreign Built.	Whether a Sailing or Steam Ship; and if a Steam Ship, how propelled.	Where Built.	When Built.	Name and Address of Builders.
†				

		Feet.	Tenths.
Number of decks .	Length from fore part of stem, under the bowsprit, to the aft side of the head of the stern post		
Number of masts .			
Rigged . . .	Main breadth to outside of plank . . .		
Stern . . .	Depth in hold from tonnage deck to ceiling at midships		
Build			
Galleries . . .	Depth in hold from upper deck to ceiling at midships, in the case of three decks and upwards		
Head			
Framework . .	Length of engine room (if any) . .		

PARTICULARS OF ENGINES (IF ANY).

No. of Engines.	Description.	Whether British or Foreign made.	When made.	Name and Address of Makers.	Diameter of Cylinders.	Length of Stroke.	No. of Horses' Power (combined).

* If foreign built, add "and her foreign name is ."

† If foreign, and time and place of build unknown, insert "FOREIGN." "Time and place of build are unknown to the declarant;" *or*, if a condemned ship, insert "Condemned by the Court of" [*naming the Court*] "on the day of ."

PARTICULARS OF TONNAGE.

GROSS TONNAGE.	No. of Tons.	DEDUCTIONS ALLOWED.	No. of Tons.
Under tonnage deck . . .		On account of space required for propelling power . . .	
Closed-in spaces above the tonnage deck, if any		On account of spaces occupied by seamen or apprentices, and appropriated to their use, and kept free from goods or stores of every kind, not being the personal property of the crew . . .	
Space or spaces between decks		These space are the following, viz. :—	
Poop			
Forecastle			
Round house			
Other closed-in spaces, if any, as follows :—			
Gross tonnage .			
Deductions, as per contra . .			
Registered tonnage .		Total deductions . .	

I, the undersigned of declare as follows :—I am a natural-born British subject, born at in the county of , and have never taken the oath of allegiance to any foreign State. The above general description of the ship is correct. whose certificate of competency or service is No. , is the master of the said ship. I am entitled to be registered, as joint owner, with the several other persons whose names are hereunder written, of shares in the said ship. To the best of my knowledge and belief, no person or body of persons other than such persons or bodies of persons as are by "The Merchant Shipping Act, 1854," qualified to be owners of British ships is entitled, as owner, to any interest whatever, either legal or beneficial, in the said ship.

JOINT OWNERS WITH DECLARANT.

Names.	Place of Residence.	Occupation.	Place of Birth.

And I make this solemn declaration conscientiously believing the same to be true.

Made and subscribed the day of 187 , by the above-named in the presence of

‡ _____

‡ If in the presence of a registrar he will add to his signature, "Registrar of the port of ." If in the presence of a magistrate his description should be added, as, for example, "Justice of the peace acting in and for" [*naming the county, city, borough, &c., as the case may be*].

FORM No. 8.

DECLARATION OF OWNERSHIP ON BEHALF OF A BODY CORPORATE AS TRANSFERREE.

Official Number of Ship.	Name of Ship.	No., Date, and Port of Registry.
	*	

No., Date, and Port of previous Registry (if any).

Whether British or Foreign Built.	Whether a Sailing or Steam Ship; and if a Steam Ship, how propelled.	Where Built.	When Built.	Name and Address of Builders.
†				

		Feet.	Tenths.
Number of decks	Length from fore part of stem, under the bowsprit, to the aft side of the head of the stern post		
Number of masts			
Rigged	Main breadth to outside of plank		
Stern	Depth in hold from tonnage deck to ceiling at midships		
Build			
Galleries	Depth in hold from upper deck to ceiling at midships, in the case of three decks and upwards		
Head			
Framework	Length of engine room (if any)		

PARTICULARS OF ENGINES (IF ANY).

No. of Engines.	Description.	Whether British or Foreign made.	When made.	Name and Address of Makers.	Diameter of Cylinders.	Length of Stroke.	No. of Horses' Power (combined).

* If foreign built, add, "her foreign name is ."

† If British, insert "BRITISH." "Built at in the county of on the day of 18 ." If foreign, insert "FOREIGN." "Built at " [*naming the place and country*] "on the day of 18 ;" *or*, if foreign, and time and place of build are unknown, insert "FOREIGN." "Time and place of build are unknown to the declarant;" *or*, if a condemned ship, insert "Condemned by the Court of" [*naming the Court*] "on the day of ."

PARTICULARS OF TONNAGE.

GROSS TONNAGE.	No. of Tons.	DEDUCTIONS ALLOWED.	No. of Tons.
Under tonnage deck . . .		On account of space required for propelling power . . .	
Closed-in spaces above the tonnage deck, if any		On account of spaces occupied by seamen or apprentices, and appropriated to their use, and kept free from goods or stores of every kind, not being the personal property of the crew . . .	
Space or spaces between decks		These spaces are the following, viz. :—	
Poop			
Forecastle			
Round house			
Other closed-in spaces, if any, as follows :—			
Gross tonnage . .			
Deductions, as per contra . .			
Registered tonnage .		Total deductions . .	

I, the undersigned in the county of of the company, declare as follows :—The said company was incorporated by virtue of * . The above general description of the ship is correct. whose certificate of competency or service is No. , is the master of the said ship. The said company is entitled to be registered as transferrees of shares in the said ship. To the best of my knowledge and belief, no person or body of persons other than such persons or bodies of persons as are by the "Merchant Shipping Act, 1854," qualified to be owners of British ships is entitled, as owner, to any interest whatever, either legal or beneficial, in the said ship. And I make this solemn declaration conscientiously believing the same to be true.

Made and subscribed the day of 18 , by the above-named in the presence of

No stamp duty is required for these two forms (see s. 9, p. 10).

* Here insert such of the descriptions as are applicable. "An Act of Parliament of the United Kingdom" [*cite the year of the reign in which the Act was passed, its chapter and title*]. "The said company is subject to the laws of the and has its principal place of business at ;" *or*, "a Charter granted by Her Majesty, and dated the day of 18 . The said company is subject to the laws of the and has its principal place of business at ;" *or*, An Act or Ordinance of the Legislature of " [*cite the year in which the Act or Ordinance was passed, its chapter and title*]. "The said company is subject to the laws of the and has its principal place of business at ;" *or*, the Act 7 & 8 Vict. c. 110, from the day of being the date of the certificate of complete registration. The said Company is subject to the laws of the and has its principal place of business at ." If in the presence of a registrar he will add to his signature "Registrar of the port of ." If in the presence of a magistrate his description should be added, as for example, "Justice of the peace acting in and for" [*naming the county, city, borough, &c., as the case may be*].

Registration of transfer.

57. Every bill of sale for the transfer of any registered ship, or of any share therein, when duly executed, shall be produced to the registrar of the port at which the ship is registered, together with the declaration hereinbefore required to be made by a transferree; and the registrar shall thereupon enter in the register book the name of the transferree as owner of the ship or share comprised in such bill of sale, and shall indorse on the bill of sale the fact of such entry having been made, with the date and hour thereof; and all bills of sale of any ship or shares in a ship shall be entered in the register book in the order of their production to the registrar.

Transmission of shares by death, bankruptcy, or marriage.

58. If the property in any ship or in any share therein becomes transmitted in consequence of the death, or bankruptcy, or insolvency of any registered owner, or in consequence of the marriage of any female registered owner, or by any lawful means other than by a transfer according to the provisions of this Act, such transmission shall be authenticated by a declaration of the person to whom such property has been transmitted, made in the form marked H. in the Schedule hereto, and containing the several statements hereinbefore required to be contained in the declaration of a transferree, or as near thereto as circumstances permit, and, in addition, a statement describing the manner in which, and the party to whom, such property has been transmitted; and such declaration shall be made and subscribed if the declarant resides at or within five miles of the custom house of the port of registry in the presence of the registrar, but if beyond that distance in the presence of any registrar or of any justice of the peace.

For the declaration of ownership required to be made by an individual, see s. 38, p. 36. As to what is to be done in case the property becomes transmitted to an unqualified owner, see s. 62, p. 64, *et seq.* The qualifications of owners of British ships are set out in s. 18, p. 14. Although no notice of trusts can be put on the register, yet equitable interests in ships may now be enforced against the owners (see s. 43, p. 43).

The following form is now substituted for that originally given in Schedule H.

FORM No. 14.

DECLARATION OF OWNERSHIP OR INTEREST ON TRANSMISSION BY BANKRUPTCY.

Official Number of Ship.	Name of Ship.	No., Date, and Port of Registry.

No., Date, and Port of previous Registry (if any).

Whether British or Foreign Built.	Whether a Sailing or Steam Ship; and if a Steam Ship, how propelled.	Where Built.	When Built.	Name and Address of Builders.
*				

		Feet.	Tenths.
Number of decks .	Length from fore part of stem, under the bowsprit, to the aft side of the head of the stern post		
Number of masts .			
Rigged . . .	Main breadth to outside of plank . .		
Stern . . .	Depth in hold from tonnage deck to ceiling at midships		
Build			
Galleries . . .	Depth in hold from upper deck to ceiling at midships, in the case of three decks and upwards		
Head			
Framework . .	Length of engine room (if any) . . .		

PARTICULARS OF ENGINES (IF ANY).

No. of Engines.	Description.	Whether British or Foreign made.	When made.	Name and Address of Makers.	Diameter of Cylinders.	Length of Stroke.	No. of Horses' power (combined).

* If foreign built, add "and her foreign name is ." If British, insert "BRITISH." "Built at in the county of on the day of 18 ." If foreign, insert "FOREIGN." "Built at [*naming the place and country*] "on the day of 18 ;" *or*, if foreign, and time and place of build unknown, insert "FOREIGN." "Time and place of build are unknown to the declarant;" *or*, if a condemned ship, insert "Condemned by the Court of" [*naming the Court*] "on the day of ."

PARTICULARS OF TONNAGE.

GROSS TONNAGE.	No. of Tons.	DEDUCTIONS ALLOWED.	No. of Tons.
Under tonnage deck . . .		On account of space required for propelling power . . .	
Closed-in spaces above the tonnage deck, if any		On account of spaces occupied by seamen or apprentices, and appropriated to their use, and kept free from goods or stores of every kind, not being the personal property of the crew .	
Space or spaces between decks		These spaces are the following, viz. :—	
Poop			
Forecastle			
Round house			
Other closed-in spaces, if any, as follows :—			
Gross tonnage . .			
Deductions, as per contra. . .			
Registered tonnage .		Total deductions . .	

* the undersigned declare as follows :—The person appearing by the register book to be the † of shares in the ship above described was on the day of one thousand eight hundred and duly ‡ and § appointed ‖ assignee of the estate and effects of the said and ¶ entitled to be registered as ** of the said shares of the said ship. And †† make this solemn declaration conscientiously believing the same to be true.

Made and subscribed by the above-named }
in the presence of }

* "I" or "we." † "Owner," *or* "mortgagee."
‡ "Adjudged a bankrupt." § Here state who has been appointed.
‖ "Official" *or* "creditors," *or* "official and creditors."
¶ "I am" *or* "we are." ** "Owner," *or* "mortgagee."
†† If in the presence of a registrar he will add to his signature "Registrar of the port of ." If in the presence of a magistrate his description should be added, as, for example, "Justice of the peace acting in and for" [*naming the county, city, borough, &c., as the case may be*].

Proof of transmission by bankruptcy, marriage, will, or on intestacy.

59. If such transmission has taken place by virtue of the bankruptcy or insolvency of any registered owner, the said declaration shall be accompanied by such evidence as may for the time being be receivable in courts of justice as proof of the title of parties claiming under any bankruptcy or insolvency; and if such transmission has taken place by virtue of the marriage of a female owner, the said declaration shall be accompanied by a copy of the register of such marriage, or other legal evidence of the celebration thereof, and shall declare the identity of the said female owner; and if such transmission

§§ 59-62. has taken place by virtue of any testamentary instrument or by intestacy, then in England, Wales, and Ireland, the said declaration shall be accompanied by the probate of the will or the letters of administration, or an official extract therefrom, and in Scotland, or in any British possession by the will or any copy thereof that may be evidence by the laws of Scotland, or of such possession, or by letters of administration or any copy thereof, or by such other document as may by the laws of Scotland, or of such possession, be receivable in the courts of judicature thereof as proof of the person entitled upon an intestacy.

Registration of transmitted share.

60. The registrar, upon the receipt of such declaration so accompanied as aforesaid, shall enter the name of the person or persons entitled under such transmission in the register book as owner or owners of the ship or share therein in respect of which such transmission has taken place; and such persons, if more than one, shall, however numerous, be considered as one person only as regards the rule hereinbefore contained relating to the number of persons entitled to be registered as owners.

Registrar to retain certain evidence.

61. Of the documents hereby required to be produced to the registrar he shall retain in his possession the following; that is to say, the surveyor's certificate, the builder's certificate, the copy of the condemnation, and all declarations of ownership.

Unqualified owner entitled by transmission may apply to Court for sale of ship.

62. Whenever any property in a ship or share in a ship becomes vested by transmission on the death of any owner or on the marriage of any female owner in any person not qualified to be the owner of British ships, it shall be lawful, if such ship is registered in England or Ireland for the Court of Chancery, or the Court of Admiralty, if in Scotland, for the Court of Session, or if in any British possession for any court possessing the principal civil jurisdiction within such possession, upon an application made by or on behalf of such unqualified person, to order a sale to be made of the property so transmitted, and to direct the proceeds of such sale, after deducting the expenses thereof, to be paid to the person entitled under such transmission, or otherwise as the court may direct; and it shall be in the discretion of any such court as aforesaid to make or refuse any such order for sale, and to annex thereto any terms or conditions, and to require

any evidence in support of such application it may think fit, and generally to act in the premises in such manner as the justice of the case requires.

Sections 62 to 65 of 17 & 18 Vict. c. 104, extended to Court of Admiralty.

24 & 25 Vict. c. 10, s. 12.—The High Court of Admiralty shall have the same powers over any British ship as are conferred upon the High Court of Chancery in England, by the sixty-second, sixty-third, sixty-fourth, and sixty-fifth sections of the Merchant Shipping Act, 1854.

Sale of a Ship by a Competent Court.

Capture.

There are other cases in which the decree of a maritime court is required. When a ship has been captured in war, in order that the captor may be able to convey a good title in selling her, he must obtain a decree of her condemnation as prize by some competent court; and this decree is one of the title-deeds to the vessel (*a*).

Condemning Court must have jurisdiction.

The Court that condemns her must be properly constituted, and have jurisdiction over the case, and must be located in the captor's country (*b*). And in all cases, if in any proceeding *in rem*, that is against the ship itself, a competent court decrees a sale, this will be binding on all the world (*c*).

Foreign decision binding even though founded on a mistake in English law.

The decision of a foreign Court is now binding on Englishmen, even though it appears from the reasons given for the decision, that the Court proceeded on a mistaken idea of English law (*d*); since it is considered that foreign laws are facts, and when a person is suing in a court, and wishes to rely upon some foreign law, it is his business to inform the Court correctly as to what that law is (*e*).

Valid sale abroad.

In any case, if the sale of a ship, or of any other personal property, is binding in the country where it takes place, it will be binding here (*f*). See as to foreign courts generally, Part X., p. 459.

Means for ascertaining foreign law.

By 24 & 25 Vict. c. 11, s. 1, the Superior Courts of this country may remit a case with queries to a Court of any foreign State with which Her Majesty may have a convention for that purpose, for ascertaining the law of such State. And by s. 3 of the same Act, the Courts of this country may pronounce an opinion on a case remitted by a Court of any such foreign country.

Order to be made by Court.

63. Every order for a sale made by such Court as aforesaid shall contain a declaration vesting the right to transfer the ship or share so to be sold in some person or persons named by

(*a*) *The Flad Oyen*, 1 C. Rob. 139; *Wheelwright* v. *Depeyster*, 1 Johns. (Amer. Rep.) 471.

(*b*) *The Henrich and Maria*, 4 C. Rob. 43; *The Falcon*, 6 C. Rob. 194; Abbott on Shipping (11th ed.), 22; *The Alerta*, 9 Cranch (Amer. Rep.), 359; *The Arabella*, 2 Gall (Amer. Rep.), 368.

(*c*) *The Bold Buccleugh*, 7 Moo. P. C. 267; Story on the Conflict of Laws, s. 592.

(*d*) *Castrique* v. *Imrie*, L. R. 4 H. L. 415; *Godard* v. *Gray*, L. R. 6 Q. B. 148.

(*e*) *Di Sora* v. *Phillips*, 10 H. L. C. 624.

(*f*) *Cammell* v. *Sewell*, 5 H. & N. 728; 29 L. J. Ex. 350.

§§ 63-65. the Court, and such nominee or nominees shall thereupon be entitled to transfer such ship or share in the same manner, and to the same extent, as if he or they were the registered owner or owners of the same; and every registrar shall obey the requisition of such nominee or nominees as aforesaid in respect of any transfer to the same extent as he would be compellable to obey the requisition of any registered owner or owners of such ship or share.

Limit of time for application.

64. Every such application as aforesaid for sale shall be made within four weeks after the occurrence of the event on which such transmission has taken place, or within such further time as such Court as aforesaid may allow, such time not in any case to exceed the space of one year from the date of such occurrence as aforesaid; and in the event of no such application being made within such period as aforesaid, or of such Court refusing to accede thereto, the ship or share so transmitted shall thereupon be forfeited in manner hereinafter directed with respect to interests acquired by unqualified owners in ships using a British flag and assuming the British character.

See ss. 103 to 106, p. 94 *et seq.*, as to forfeiture in such cases.

Power of Courts to prohibit transfers.

65. It shall be lawful in England or Ireland for the Court of Chancery, or the Court of Admiralty, in Scotland for the Court of Session, in any British possession for any Court possessing the principal civil jurisdiction within such possession, without prejudice to the exercise of any other power such Court may possess, upon the summary application of any interested person made either by petition or otherwise, and either *ex parte* or upon service of notice on any other person, as the Court may direct, to issue an order prohibiting for a time to be named in such order any dealing with such ship or share; and it shall be in the discretion of such Court to make or refuse any such order, and to annex thereto any terms or conditions it may think fit, and to discharge such order when granted with or without costs, and generally to act in the premises in such manner as the justice of the case requires; and every registrar, without being made a party to the proceedings, upon being served with such order, or an official copy thereof, shall obey the same.

Applicant must show he can perform his part.

A person who applies to a Court under this section will be treated as standing in the same position as a plaintiff in a suit for specific per-

formance, and, therefore, in order to obtain an order to restrain a transfer, he must show that he is in a position to carry out his part of the contract (*g*). Every Division of the High Court of Justice may now direct an order, prohibiting the dealing in any ship or share, with the same effect as if it had been issued by the Court of Chancery under this section (*h*).

§§ 65, 66.

Every division of High Court can make such order.

Mortgages.

66. A registered ship or any share therein may be made a security for a loan or other valuable consideration; and the instrument creating such security, hereinafter termed a "mortgage," shall be in the form marked I. in the schedule hereto, or as near thereto as circumstances permit; and on the production of such instrument, the registrar of the port at which the ship is registered shall record the same in the register-book.

Mortgage of ships and shares therein.

The following forms have been substituted for those given in Schedule I. They are exempt from stamp duty (see s. 9, p. 10):—

FORM No. 11.

MORTGAGE (TO SECURE PRINCIPAL SUM AND INTEREST).

Official Number of Ship.	Name of Ship.

Port Number and Year of Registry.	Port of Registry.	British or Foreign Built.	How Propelled.	Where Built.	When Built.

		Feet.	Tenths.
Number of decks .	Length from fore part of stem, under the bowsprit, to the aft side of the head of the stern post		
Number of masts .			
Rigged . . .	Main breadth to outside of plank . . .		
Stern	Depth in hold from tonnage deck to ceiling at midships		
Build			
Galleries . . .	Depth in hold from upper deck to ceiling at midships, in the case of three decks and upwards		
Head			
Framework . .	Length of engine room (if any) . . .		

PARTICULARS OF ENGINES (IF ANY).

No. of Engines.	Description.	Whether British or Foreign made.	When made.	Name and Address of Makers.	Diameter of Cylinders.	Length of Stroke.	No. of Horses' Power (combined).

(*g*) *The Isis, Ex parte Baker*, 3 Mar. Law Cas. 52. (*h*) *Nicholas* v. *Dracachis*, 1 P. D. 72.

Gross Tonnage.	No. of Tons.	Deductions Allowed.	No. of Tons.
Under tonnage deck . . .		On account of space required for propelling power . . .	
Closed-in spaces above the tonnage deck, if any		On account of spaces occupied by seamen or apprentices, and appropriated to their use, and kept free from goods and stores of every kind, not being the personal property of the crew .	
Space or spaces between decks		These spaces are the following, viz. :—	
Poop			
Forecastle			
Round house			
Other closed-in spaces, if any, as follows :—			
Gross tonnage . .			
Deductions, as per contra . . .			
Registered tonnage .		Total deductions . .	

* the undersigned in consideration of this day lent to † by do hereby for ‡ and § heirs, covenant with the said firstly : That * or § heirs, executors, or administrators, will pay to the said the said sum of together with interest thereon at the rate of per cent. per annum on the day of next ; and secondly, that if the said principal sum is not paid on the said day * or § heirs, executors, or administrators, will during such time as the same or any part thereof remain unpaid, pay to the said interest on the whole or such part thereof as may for the time being remain unpaid, at the rate of per cent. per annum, by equal half-yearly payments on the day of and day of in every year ; and for better securing to the said the repayment in manner aforesaid of the said principal sum and interest * hereby mortgage to the said shares, of which ‖ the owner in the ship above particularly described, and in her boats, guns, ammunition, small arms, and appurtenances. * declare that this mortgage is made on condition that the power of sale which by the "Merchant Shipping Act, 1854," is vested in the said shall not be exercised until the said ¶ day of . Lastly,* for ‡ and § heirs, covenant with the said and assigns that * ha power to mortgage in manner aforesaid the above-mentioned shares, and that the same are free from incumbrances.**

In witness whereof * ha hereto subscribed § name and affixed § seal this day of One thousand eight hundred and .

Executed by the above-named in the presence of }

* "I" *or* "we." † "Me," *or* "us." ‡ "Myself," *or* "ourselves."
§ "My," *or* "our." ‖ "I am," *or* "we are."
¶ Insert the day fixed for payment of principal as above.
** If any prior incumbrance add, "save as appears by the registry of the said ship."

INDORSEMENT.

N.B.—*In case of Transfer it may be made by Indorsement in the following form:—*

TRANSFER OF MORTGAGE.

* the within-mentioned in consideration of this day paid to † by hereby transfer to ‡ the benefit of the within written security. In witness whereof § ha hereunto subscribed ‖ name and affixed ‖ seal , this day of One thousand eight hundred and .

Executed by the above-named }
in the presence of }

N.B.—*In case a Mortgage is paid off the following Memorandum of its Discharge may be used:—*

Received the sum of in discharge of the within written security.
Dated at this day of 18 .
Witness
of

FORM No. 12.

MORTGAGE (TO SECURE ACCOUNT CURRENT, &c.)

Official Number of Ship.	Name of Ship.

Port Number and Year of Registry.	Port of Registry.	British or Foreign Built.	How Propelled.	Where Built.	When Built.

		Feet.	Tenths.
Number of decks .	Length from fore part of stem, under the bowsprit, to the aft side of the head of the stern post		
Number of masts .			
Rigged . . .	Main breadth to outside of plank . . .		
Stern . . .	Depth in hold from tonnage deck to ceiling at midships		
Build			
Galleries . . .	Depth in hold from upper deck to ceiling at midships, in the case of three decks and upwards		
Head			
Framework . .	Length of engine room (if any) . . .		

* "I" *or* "we." † "Me" *or* "us." ‡ "Him" *or* "them."
§ "I" *or* "we." ‖ "My" *or* "our."

PARTICULARS OF ENGINES (IF ANY).

No. of Engines.	Description.	Whether British or Foreign made.	When made.	Name and Address of Makers.	Diameter of Cylinders.	Length of Stroke.	No. of Horses' Power (combined)

GROSS TONNAGE.	No. of Tons.	DEDUCTIONS ALLOWED.	No. of Tons.
Under tonnage deck . . .		On account of space required for propelling power . . .	
Closed-in spaces above tonnage deck, if any		On account of spaces occupied by seamen or apprentices, appropriated to their use, and kept free from goods and stores of every kind, not being the personal property of the crew .	
Space or spaces between deck		These spaces are the following, viz. :—	
Poop			
Forecastle			
Round house			
Other closed-in spaces, if any, as follows :—			
Gross tonnage . .			
Deductions, as per contra . . .			
Registered tonnage .		Total deductions . .	

Whereas *

Now † the undersigned in consideration of the premises for ‡ and § heirs, covenant with the said and ‖ assigns, to pay to him or them the sums for the time being due on this security, whether by way of principal or interest, at the times and manner aforesaid. And for the purpose of better securing to the said the payment of such sums as last aforesaid,† do hereby mortgage to the said shares, of which¶ the owner in the ship above particularly described, and in her boats, guns, ammunitions, small arms, and appurtenances.

Lastly † for ‡ and § heirs, covenant with the said and ‖ assigns that † ha power to mortgage in manner aforesaid the above-mentioned shares, and that the same are free from incumbrances.**

In witness whereof † ha hereto subscribed § name and affixed § seal this day of One thousand eight hundred and .

Executed by the above-named }
in the presence of }

* Here state by way of recital that there is an account current between the mortgagor (describing him) and the mortgagee (describing him); and describe the nature of the transaction, so as to show how the amount of principal and interest due at any given time is to be ascertained, and the manner and time of payment.

† "I" *or* "we." ‡ "Myself" *or* "ourselves."

§ "My" *or* "our." ‖ "His" *or* "their." ¶ "I am" *or* "we are."

** If any prior incumbrance add, "save as appears by the registry of the said ship."

§§ 66-68.

The indorsement on this form, relating to transfers of mortgages, is precisely similar to that indorsed on the preceding form.

Section 66 is imperative, that is it commands that mortgages shall be made according to its provisions, in order to be valid and effective (*i*); and though equitable mortgages may now be enforced (*k*) (see s. 43, p. 43), yet this does not remove the necessity of compliance with the prescribed forms. The Courts will, however, look to the intention of the parties, and if it appears that the transaction was meant to be a mortgage, the instrument will only be allowed to have the force of a mortgage, even though it is in form an absolute bill of sale (*l*), but it is not then exempt from stamp duty (see s. 9, p. 10). When a person lends money on the mortgage of a ship, he should ascertain what maritime liens there may be upon the ship, because his security will only rank after such liens; and claims upon her for bottomry, wages, salvage, and damage will be satisfied first (*m*).

Mortgages must be in statutory form.

Intention of parties considered.

Maritime liens take priority over mortgages.

A mortgagee, on becoming entitled to sell the ship, and taking possession of her with that object, is bound to act with the same care and prudence, and to use every effort, which a prudent proprietor would use, to have the sale conducted to the greatest advantage (*n*). But a power of sale is not essential to the mortgage of a ship (*o*). (See further, s. 70, p. 72.) Bottomry, which is the mortgage of the vessel by the master for repairs and necessaries, is considered in Part III., p. 98.

Sale by mortgagee.

Bottomry.

67. Every such mortgage shall be recorded by the registrar in the order of time in which the same is produced to him for that purpose; and the registrar shall, by memorandum under his hand, notify on the instrument of mortgage that the same has been recorded by him, stating the date and hour of such record.

Mortgages to be registered in order of time of production.

68. Whenever any registered mortgage has been discharged, the registrar shall, on the production of the mortgage deed, with a receipt for the mortgage money indorsed thereon, duly signed and attested, make an entry in the register book to the effect that such mortgage has been discharged; and upon such entry being made, the estate, if any, which passed to the mortgagee, shall vest in the same person or persons in whom the same would, having regard to intervening acts and circumstances, if any, have vested if no such mortgage had ever been made.

Entry of discharge of mortgage.

(*i*) *The Liverpool Borough Bank* v. *Turner*, 1 Johns. & H. 169; 2 De G. F. & J. 502.

(*k*) 25 & 26 Vict. c. 63, s. 3.

(*l*) *Gardner* v. *Cazenove*, 1 H. & N. 423; *The Inniskallen*, L. R. 1 A. & E. 72; 2 Mar. Law Cas. 470; *European, &c. Co.* v. *Royal Mail, &c. Co.*, 4 K. & J. 686.

(*m*) *The Bold Buccleugh*, 7 Moo. P. C. 267; Williams and Bruce, Admiralty Practice, 30.

(*n*) *Marriott* v. *The Anchor Reversionary Co.*, 2 Giff. 469; 3 L. T. N. S. 538.

(*o*) *Dickinson* v. *Kitchen*, 8 E. & B. 789.

§§ 68-70.

Mortgage discharged on the register cannot be revived.

The whole object of registration is, that there shall be a true statement upon the register of every transaction, and therefore a mortgage which is once entered upon the register as discharged, cannot be revived, even though the registrar writes a memorandum on the margin that the discharge was by mistake, and that a transfer only was intended (*p*).

Priority of mortgages.

69. If there is more than one mortgage registered of the same ship or share therein, the mortgagees shall, notwithstanding any express, implied, or constructive notice, be entitled in priority one over the other according to the date at which each instrument is recorded in the register books, and not according to the date of each instrument itself.

Mortgagee not to be deemed owner.

70. A mortgagee shall not by reason of his mortgage be deemed to be the owner of a ship or any share therein, nor shall the mortgagor be deemed to have ceased to be owner of such mortgaged ship or share, except in so far as may be necessary for making such ship or share available as a security for the mortgage debt.

Mortgagee in possession.

Under the previous Act from which this section was taken (*q*) it was decided that the corresponding section did not apply to a mortgagee in possession (*r*); nor does it prevent a mortgagee from using the ship, as well as selling her (*s*). But if the mortgagee does use the ship for the purpose of rendering his security available, he is then an owner within the meaning of the statute, and becomes subject to the liabilities attached to that character (*t*) (see s. 100, p. 93).

He may use the ship, but is then liable as an owner.

Previous law.

Before this enactment, the mortgagee became, in the eye of the law, the owner as soon as the mortgage was registered, and the mortgagor was considered to be a *quasi* agent for the mortgagee. The inconvenience of this led to the above section, and the effect of it has been that as long as the mortgagee does not take possession of the ship, the mortgagor may act in every respect as the owner, so long as his dealings with the vessel do not detract from or impair the sufficiency of the security. He can, therefore, enter into any contracts touching the disposition of the ship (*u*).

Mortgagor while in possession may act as owner.

He has implied authority to repair.

A mortgagor, who was allowed to remain in possession and use of the vessel, placed her in the hands of a shipwright to have her repaired. The shipwright not being able to get paid for the repairs, kept the vessel, and it was decided that, as the mortgagor was allowed to retain the ship, he had an implied authority to have her repaired, and therefore the shipwright was entitled to hold her against the mortgagee until his debt was paid (*x*), but this was in virtue of a common law possessory

(*p*) *Bell* v. *Blyth*, L. R. 4 Ch. 136; *The Rose*, L. R. 4 A. & E. 6.
(*q*) 8 & 9 Vict. c. 89, s. 45.
(*r*) *Woods* v. *Read*, 15 L. T. O. S. 90; *Dean* v. *M'Ghie*, 4 Bing. 45.
(*s*) *European, &c. Mail. Co.* v. *Royal Mail, &c. Co.*, 4 K. & J. 676.
(*t*) *De Mattos* v. *Gibson*, 1 Johns. & H. 84.
(*u*) *Collins* v. *Lamport*, 2 Mar. Law Cas. (Ch.) 153; 34 L. J. (Ch.) 196.
(*x*) *Williams* v. *Allsup*, 10 C. B. N. S. 417; 30 L. J. C. P. 353.

lien which is not taken away by this section (*y*). A person who supplies necessaries, or executes repairs on a ship, has no maritime lien on her, hence his claim is postponed to that of the mortgagee (*z*). As a mortgagee is not an owner, he may have the ship arrested at his own suit, which he could not do formerly (*a*). The mortgage of a ship carries the freight with it (*b*), and the freight becomes the mortgagee's property as a *chose in action* (*c*). (See further, s. 66, and see Part IX., p. 419, as to repairs and necessaries.)

Repairs give no maritime lien.

71. Every registered mortgagee shall have power absolutely to dispose of the ship or share in respect of which he is registered, and to give effectual receipts for the purchase money; but if there are more persons than one registered as mortgagees of the same ship or share, no subsequent mortgagee shall, except under the order of some court capable of taking cognisance of such matters, sell such ship or share without the concurrence of every prior mortgagee.

Mortgagee to have power of sale.

72. No registered mortgage of any ship or of any share therein shall be affected by any act of bankruptcy committed by the mortgagor after the date of the record of such mortgage, notwithstanding such mortgagor at the time of his becoming bankrupt may have in his possession and disposition and be reputed owner of such ship or share thereof; and such mortgage shall be preferred to any right, claim, or interest in such ship or any share thereof which may belong to the assignees of such bankrupt.

Rights of mortgagee not affected by any act of bankruptcy of mortgagor.

73. A registered mortgage of any ship or share in a ship may be transferred to any person, and the instrument creating such transfer shall be in the form marked K. in the schedule hereto, and on the production of such instrument the registrar shall enter in the register book the name of the transferree as mortgagee of the ship or shares therein mentioned, and shall by memorandum under his hand record on the instrument of transfer that the same has been recorded by him, stating the date and hour of such record.

Transfer of mortgages.

A transfer of a mortgage may now be made by an indorsement on the

Form of transfer.

(*y*) *The Two Ellens*, L. R. 3 A. & E. 358.
(*z*) *The Two Ellens*, L. R. 4 P. C. 161. See the elaborate judgment of Mellish, L. J., in this case.
(*a*) Maclachlan on Shipping, (2nd ed.) 47.
(*b*) *Rusden* v. *Pope*, L. R. 3 Ex. 269; *Brown* v. *Tanner*, L. R. 3 Ch. 579.
(*c*) *Kerswill* v. *Bishop*, 2 C. & J. 529.

§ 74. original mortgage, in the form affixed to the form of a mortgage to secure principal and interest (see s. 66, p. 67).

Transmission of interest of mortgagee by death, bankruptcy, or marriage.

74. If the interest of any mortgagee in any ship or in any share therein becomes transmitted in consequence of death, bankruptcy, or insolvency, or in consequence of the marriage of any female mortgagee, or by any lawful means other than by a transfer according to the provisions of this Act, such transmission shall be authenticated by a declaration of the person to whom such interest has been transmitted, made in the form marked L. in the schedule hereto, and containing a statement describing the manner in which and the party to whom such property has been transmitted; and such declaration shall be made and subscribed, if the declarant resides at or within five miles of the custom house of the port of registry, in the presence of the registrar, but if beyond that distance in the presence of any registrar or of any justice of the peace, and shall be accompanied by such evidence as is hereinbefore required to authenticate a corresponding transmission of property from one registered owner to another.

The following form is now used instead of the original Form L. :—

DECLARATION BY MORTGAGEE TAKING BY TRANSMISSION.

Official Number of Ship.	Name of Ship.	No., Date, and Port of Registry.

No., Date, and Port of previous Registry (if any).

Whether British or Foreign Built.	Whether a Sailing or Steam Ship; and if a Steam Ship, how propelled.	Where Built.	When Built.	Name and Address of Builders.
*				

* If foreign built, add "and her foreign name is ." If foreign, and time and place of build unknown, insert "FOREIGN." "Time and place of build are unknown to the declarant;" *or*, if a condemned ship, insert "Condemned in the Court of" [*naming the Court*] "on the day of .]

		Feet.	Tenths.
Number of decks .	Length from fore part of stem, under the bowsprit, to the aft side of the head of the stern post		
Number of masts .	Main breadth to outside of plank . . .		
Rigged . . .	Depth in hold from tonnage deck to ceiling at midships		
Stern . . .	Depth in hold from upper deck to ceiling at midships, in the case of three decks and upwards		
Build	Length of engine room (if any) . . .		
Galleries . . .			
Head			
Framework . .			

PARTICULARS OF ENGINES (IF ANY).

No. of Engines.	Description.	Whether British or Foreign made.	When made.	Name and Address of Makers.	Diameter of Cylinders.	Length of Stroke.	No. of Horses' Power (combined)

PARTICULARS OF TONNAGE.

GROSS TONNAGE.	No. of Tons.	DEDUCTIONS ALLOWED.	No. of Tons.
Under tonnage deck . . .		On account of space required for propelling power . . .	
Closed-in spaces above the tonnage deck, if any		On account of spaces occupied by seamen or apprentices, and appropriated to their use, and kept free from goods or stores of every kind, not being the personal property of the crew .	
Space or spaces between decks		These spaces are the following, viz. :—	
Poop			
Forecastle			
Round house			
Other closed-in spaces, if any, as follows :—			
Gross tonnage . .			
Deductions, as per contra . . .			
Registered tonnage .		Total deductions . .	

I, the undersigned *A. B.*, of in the county of declare as follows:—

I declare that the person appearing by the register book to be the mortgagee of shares in the ship above described* [*died at in the county of having first duly made his will, dated the day of whereby he appointed me executor, and I proved his said will on the day of in the Court of*], or [*died at in the county of on the day of intestate, and that letters of administration of his estate and effects were on the day of duly granted to me by the Court of*].

or

We declare that *C. D.*, the person appearing on the register book to be the mortgagee of shares in the ship above described† [*was on the day of duly adjudged a bankrupt*], or [*was duly declared insolvent*], and that we were on the day of appointed assignees of the said *C. D.*, and we are by law entitled to be registered as mortgagees of the said shares of the said ship in place of the said *C. D.*

or

I declare that on the day of I intermarried with and am now the husband of *C. D.*, the person appearing on the register book to be the mortgagee of shares in the said ship, and I declare that on such marriage the interest in the said *C. D.* became by law vested in me, and that I am entitled to be registered as mortgagee of the said shares in place of the said *C. D.*

And I make this solemn declaration conscientiously believing the same to be true.

(Signed)

Made and subscribed by the above-named *A. B.* in the presence of me

(Signed) *Registrar or Justice of the Peace.*

As to the transmission between registered owners (see s. 58, p. 61), and for the proofs required (see s. 59, p. 63). This form is exempt from stamp duty (see s. 9, p. 10).

Entrance of transmitted mortgagee.

75. The registrar, upon the receipt of such declaration and the production of such evidence as aforesaid, shall enter the name of the person or persons entitled under such transmission in the register-book as mortgagee or mortgagees of the ship or share in respect of which such transmission has taken place.

Before the Judicature Acts of 1873 and 1875 (*a*), the Admiralty Court could only exercise jurisdiction over mortgages registered under this Act (*b*). Now, however, it is presumed that the Admiralty Division can dispose of all questions relative to mortgages of ships.

Certificates of Mortgage and Sale.

Powers of mortgage and sale may be conferred by certificate.

76. Any registered owner, if desirous of disposing, by way of mortgage or sale of the ship or share in respect of which he

* Alter according to circumstances.

(*a*) 36 & 37 Vict. c. 66, s. 42, and 38 & 39 Vict. c. 77.

(*b*) 24 Vict. c. 10, s. 11.

is registered at any place out of the country or possession in which the port of registry of such ship is situate, may apply to the registrar, who shall thereupon enable him to do so by granting such certificates as are hereinafter mentioned, to be called respectively certificates of mortgage or certificates of sale, according as they purport to give a power to mortgage or a power to sell.

Requisites for certificates of mortgage and sale.

77. Previously to any certificate of mortgage or sale being granted, the applicant shall state to the registrar, to be by him entered in the register-book, the following particulars; (that is to say,)

(1.) The names of the persons by whom the power mentioned in such certificate is to be exercised, and in the case of a mortgage the maximum amount of charge to be created, if it is intended to fix any such maximum, and in the case of a sale the minimum price at which a sale is to be made, if it is intended to fix any such minimum:

(2.) The specific place or places where such power is to be exercised, or if no place be specified, then that it may be exercised anywhere, subject to the provisions hereinafter contained:

(3.) The limit of time within which such power may be exercised.

Restrictions on certificates of mortgage and sale.

78. No certificate of mortgage or sale shall be granted so as to authorise any mortgage or sale to be made—

At any place within the United Kingdom, if the port of registry of the ship be situate in the United Kingdom; or at any place within the same British possession if the port of registry is situate within a British possession; or

By any person not named in the certificate.

Forms of certificates of mortgage and sale.

79. Certificates of mortgage and sale shall be in the forms marked respectively M. and N. in the schedule hereto, and shall contain a statement of the several particulars hereinbefore directed to be entered in the register-book, and in addition thereto an enumeration of any registered mortgages or certificates of mortgage or sale affecting the ships or shares in respect of which such certificates are given.

FORM M.

CERTIFICATE OF MORTGAGE.

Official Number of Ship.	Name of Ship.	No., Date, and Port of Registry.

No., Date, and Port of previous Registry (if any).

Whether British or Foreign Built.	Whether a Sailing or Steam Ship; and if a Steam Ship, how propelled.	Where Built.	When Built.	Name and Address of Builders.
*				

		Feet.	Tenths.
Number of decks	Length from fore part of stem, under the bowsprit, to the aft side of the head of the stern post		
Number of masts			
Rigged	Main breadth to outside of plank		
Stern	Depth in hold from tonnage deck to ceiling at midships		
Build			
Galleries	Depth in hold from upper deck to ceiling at midships, in the case of three decks and upwards		
Head			
Framework	Length of engine room (if any)		

PARTICULARS OF ENGINES (IF ANY).

No. of Engines.	Description.	Whether British or Foreign made.	When made.	Name and Address of Makers.	Diameter of Cylinders.	Length of Stroke.	No. of Horses' Power (combined.)

* If foreign built, add "and her foreign name is ." If foreign, and time and place of build unknown, insert "FOREIGN." "Time and place of build are unknown to the declarant;" *or*, if a condemned ship, insert "Condemned in the Court of" [*naming the Court*] "on the day of ."

PARTICULARS OF TONNAGE.

GROSS TONNAGE.	No. of Tons.	DEDUCTIONS ALLOWED.	No. of Tons.
Under tonnage deck . . .		On account of space required for propelling power . . .	
Closed-in spaces above the tonnage deck, if any		On account of spaces occupied by seamen or apprentices, and appropriated to their use, and kept free from stores or goods of every kind, not being the personal property of the crew .	
Space or spaces between decks		These spaces are the following, viz. :—	
Poop			
Forecastle			
Round house			
Other closed-in spaces, if any, as follows :—			
Gross tonnage . .			
Deductions, as per contra . . .			
Registered tonnage .		Total deductions . .	

ACCOUNT OF TITLE OF SUBSCRIBING OWNERS.

Names of the several subscribing Owners.	Number of Sixty-fourth Shares held by each of the subscribing Owners.	Account of Mortgages or Certificates of Mortgage or Sale granted in respect of Shares of subscribing Owners.

(1). We,* the several above-mentioned persons, whose names are hereunto subscribed, being owners of the above ship in the proportions set opposite our respective names in the above account of title, (*but subject to the several mortgages above-mentioned,*) hereby appoint *A. B.* of and *C. D.* of and each of them, our attornies and attorney jointly or severally in our names and on our behalf to mortgage our shares in the above ship, and to execute and do all such deeds, matters, and things as may be necessary for carrying into effect the power hereby given.

(2.) We declare that the amount of money to be raised by mortgage under this power shall not exceed £ and that the rate of interest at which the same is raised shall not exceed £ for every £100 by the year.

(3.) We declare that the power of mortgaging hereby given may be exercised at .

(4.) We declare that the above power shall not be exercised after the expiration of months from the date hereof.

In witness whereof, we have hereunto subscribed our names and affixed our seals, this day of .

(L.S.) *E. F.* of
(L.S.) *G. H.* of
&c.

I, *M. N.*, Registrar of hereby certify, that the above written particulars relating to the ship , and to the title of several of the above-mentioned owners,

* Alter accordingly if there is only one appointer or one attorney.

are correct; and I further certify, that the said owners have exercised this certificate in manner above appearing.

(Signed) Registrar.

N.B.—Mortgages created under this power must be indorsed on the certificate in the following form, or as near thereto as circumstances permit:—

The day of

*The within mentioned shares in the ship were this day mortgaged to X. Y. of to secure * £ and interest.*

(Signed) } *Registrar or Consular Officer.*

FORM N.†

CERTIFICATE OF SALE.

Official Number of Ship.	Name of Ship.	No., Date, and Port of Registry.

No., Date, and Port of previous Registry (if any).

Whether British or Foreign Built.	Whether a Sailing or Steam Ship; and if a Steam Ship, how propelled.	Where Built.	When Built.	Name and Address of Builders.
‡				

		Feet.	Tenths.
Number of decks	Length from fore part of stem, under the bowsprit, to the aft side of the head of the stern post		
Number of masts			
Rigged	Main breadth to outside of plank		
Stern	Depth in hold from tonnage deck to ceiling at midships		
Build			
Galleries	Depth in hold from upper deck to ceiling at midships, in the case of three decks and upwards		
Head			
Framework	Length of engine room (if any)		

* If the mortgage is to cover advances insert "a sum not exceeding £ " *or* "General balance account," as the case may be.

† All the owners of the ship must be parties to this document.

‡ If foreign built, add "and her foreign name is ." If foreign, and time and place of build unknown, insert "FOREIGN." "The time and place of build are unknown to the declarant;" *or*, if a condemned ship, insert "Condemned in the Court of" [*naming the Court*] "on the day of ."

PARTICULARS OF ENGINES (IF ANY).

No. of Engines.	Description.	Whether British or Foreign made.	When made.	Name and Address of Makers.	Diameter of Cylinders.	Length of Stroke.	No. of Horses' Power (combined).

PARTICULARS OF TONNAGE.

GROSS TONNAGE.	No. of Tons.	DEDUCTIONS ALLOWED.	No. of Tons.
Under tonnage deck		On account of space required for propelling power . . .	
Closed-in spaces above the tonnage deck, if any		On account of spaces occupied by seamen or apprentices, and appropriated to their use, and kept free from goods or stores of every kind, not being the personal property of the crew .	
Space or spaces between decks		These spaces are the following, viz. :—	
Poop			
Forecastle			
Round house			
Other closed-in spaces, if any, as follows :—			
Gross tonnage . .			
Deductions, as per contra . . .			
Registered tonnage .		Total deductions . .	

ACCOUNT OF TITLE TO THE ABOVE-MENTIONED SHIP.

Names of the Owners of the Ship above-mentioned.	Number of Sixty-fourth Shares held by each Owner.	Account of Mortgages, or Certificates of Mortgage, or Sale granted in respect of Ship.

(1.) We*, the several above-mentioned persons whose names are hereunto subscribed, being owners of the above ship in the proportions set against our respective names in the above-mentioned account of title, (*but subject to the several mortgages above-mentioned*), hereby appoint *A. B.* of and *C. D.* of , and each of them, our attornies and attorney jointly or severally in our names and on our behalf to sell the above ship, and to execute and do all such deeds, matters, and things as may be necessary for carrying into effect the power hereby given.

* Alter accordingly if only one appointer or one attorney.

(2.) We declare that the ship shall not be sold for a less sum than £
(3.) We declare that the ship may be sold at
(4.) We declare that the above power shall not be exercised after the expiration of months from the date hereof.

In witness whereof, we have hereunto subscribed our names and affixed our seals, this day of

(L.S.) *E. F.* of
(L.S.) *G. H.* of
&c.

I, *M. N.*, Registrar of , hereby certify that the above-written particulars relating to the ship and to the title of the several above-mentioned owners are correct; and I further certify that the said owners have executed this certificate in manner above appearing.

(Signed) Registrar.

No stamp duty is required for these forms (see s. 9, p. 10).

Rules as to certificates of mortgage.

80. The following rules shall be observed as to certificates of mortgage; (that is to say,)

(1.) The power shall be exercised in conformity with the directions contained in the certificate:

Record to be indorsed.

(2.) A record of every mortgage made thereunder shall be indorsed thereon by a registrar or British consular officer:

Not to be impeached by death.

(3.) No mortgage *bonâ fide* made thereunder shall be impeached by reason of the person by whom the power was given dying before the making of such mortgage:

Or bankruptcy in certain cases.

(4). Whenever the certificate contains a specification of the place or places at which, and a limit of time not exceeding twelve months within which, the power is to be exercised, no mortgage *bonâ fide* made to a mortgagee without notice shall be impeached by reason of the bankruptcy or insolvency of the person by whom the power was given:

Priority by date of record.

(5.) Every mortgage which is so registered as aforesaid on the certificate shall have priority over all mortgages of the same ship or share created subsequently to the date of the entry of the certificate in the register-book; and if there be more mortgages than one so indorsed the respective mortgagees claiming thereunder shall, notwithstanding any express, implied, or constructive notice, be entitled one before the other according to the date at which a record of each instrument is indorsed on the certificate, and not according to the date of the instrument creating the mortgage:

Certificate gives same

(6.) Subject to the foregoing rules every mortgagee whose

mortgage is registered on the certificate shall have the same rights and powers and be subject to the same liabilities as he would have had and been subject to if his mortgage had been registered in the register-book instead of on the certificate:

rights as register-book.

(7.) The discharge of any mortgage so registered on the certificate may be indorsed thereon by any registrar or British consular officer, upon the production of such evidence as is hereby required to be produced to the registrar on the entry of the discharge of a mortgage in the register-book (*see sect.* 58, p. 61); and upon such indorsement being made, the estate, if any, which passed to the mortgagee shall vest in the same person or persons in whom the same would, having regard to intervening acts and circumstances, if any, have vested if no such mortgage had been made:

Indorsement of discharge.

(8.) Upon the delivery of any certificate of mortgage to the registrar by whom it was granted he shall, after recording in the register-book in such manner as to preserve its priority any unsatisfied mortgage registered thereon, cancel such certificate, and enter the fact of such cancellation in the register-book; and every certificate so cancelled shall be void to all intents.

Cancellation of certificate.

81. The following rules shall be observed as to certificates of sale; (that is to say,)

Rules as to certificates of sale.

(1.) No such certificate shall be granted except for the sale of an entire ship:

(2.) The power shall be exercised in conformity with the directions contained in the certificate:

(3.) No sale *bonâ fide* made to a purchaser for valuable consideration shall be impeached by reason of the person by whom the power was given dying before the making of such sale:

Not to be impeached by death.

(4.) Whenever the certificate contains a specification of the place or places at which, and a limit of time not exceeding twelve months within which, the power is to be exercised, no sale *bonâ fide* made to a purchaser for valuable consideration without notice shall be impeached by reason of the bankruptcy or insolvency of the person by whom the power was given:

Or bankruptcy in certain cases.

(5.) Any transfer made to a person qualified to be the

Transfer.

§ 81.

owner of British ships shall be by bill of sale in the form hereinbefore mentioned, or as near thereto as circumstances permit (*see sect.* 55, *p.* 61.)

Sale.

(6.) If the ship is sold to a party qualified to hold British ships, the ship shall be registered anew ; but notice of all mortgages enumerated on the certificate of sale shall be entered in the register-book :

Documents to be produced.

(7.) Previously to such registry anew there shall be produced to the registrar required to make the same the bill of sale by which the ship is transferred, the certificate of sale, and the certificate of registry of such ship :

Former register closed.

(8.) Such last-mentioned registrar shall retain the certificates of sale and registry, and after having indorsed on both of such instruments an entry of the fact of a sale having taken place, shall forward the said certificates to the registrar of the port appearing on such certificates to be the former port of registry of the ship, and such last-mentioned registrar shall thereupon make a memorandum of the sale in his register-book, and the registry of the ship in such book shall be considered as closed, except as far as relates to any unsatisfied mortgages or existing certificates of mortgage entered therein :

Re-registry may be made without re-survey.

(9.) On such registry anew the description of the ship contained in her original certificate of registry may be transferred to the new register-book, without her being re-surveyed, and the declaration to be made by the purchaser shall be the same as would be required to be made by an ordinary transferree (*see sect.* 56, *p.* 56) :

Sale to unqualified owner.

(10.) If the ship is sold to a party not qualified to be the owner of a British ship, the bill of sale by which the ship is transferred, the certificate of sale, and the certificate of registry shall be produced to some registrar or consular officer, who shall retain the certificates of sale and registry, and, having indorsed thereon the fact of such ship having been sold to persons not qualified to be owners of British ships, shall forward such certificates to the registrar of the port appearing on the certificate of registry to be the port of registry of such ship ; and such last-mentioned registrar shall there-

upon make a memorandum of the sale in his register-book, and the registry of the ship in such book shall be considered as closed, except so far as relates to any unsatisfied mortgages or existing certificates of mortgage entered therein:

Penalty for non-compliance.

(11.) If upon a sale being made to an unqualified person, default is made in the production of such certificates as are mentioned in the last rule, such unqualified person shall be considered, by British law, as having acquired no title to, or interest in, the ship; and further, the party upon whose application such certificate was granted, and the person exercising the power, shall each incur a penalty not exceeding 100*l.*

Cancellation of certificate if no sale takes place.

(12.) If no sale is made in conformity with the certificate of sale, such certificate shall be delivered to the registrar by whom the same was granted; and such registrar shall thereupon cancel it, and enter the fact of such cancellation in the register-book; and every certificate so cancelled, shall be void to all intents.

Powers of Commissioners of Customs in case of loss of certificate of mortgage or sale.

82. Upon proof at any time to the satisfaction of the Commissioners of Customs that any certificate of mortgage or sale is lost, or so obliterated as to be useless, and that the powers thereby given have never been exercised, or if they have been exercised, then upon proof of the several matters and things that have been done thereunder, it shall be lawful for the registrar, with the sanction of the said Commissioners, as circumstances may require, either to issue a new certificate, or to direct such entries to be made in the register-book, or such other matter or thing to be done as might have been made or done if no such loss or obliteration had taken place.

Revocation of certificates of mortgage and sale.

83. The registered owner for the time being of any ship or share therein in respect of which a certificate of mortgage or sale has been granted, specifying the place or places where the power thereby given is to be exercised, may, by an instrument under his hand, made in the form O. in the schedule hereto, or as near thereto as circumstances permit, authorise the registrar by whom such certificate was granted, to give notice to the registrar or consular officer, registrars or consular officers, at such place or places, that such certificate is revoked; and notice shall be given accordingly; and all registrars or consular officers receiving such notice shall record the same,

§ 83. and shall exhibit the same to all persons who may apply to them for the purpose of effecting or obtaining a mortgage or transfer under the said certificate of mortgage or sale; and after such notice has been so recorded, the said certificate shall, so far as concerns any mortgage or sale to be thereafter made at such place, be deemed to be revoked and of no effect; and every registrar or consular officer recording any such notice shall thereupon state to the registrar by whom the certificate was granted, whether any previous exercise of the power to which such certificate refers has taken place.

FORM O.

FORM OF REVOCATION.

Official Number of Ship.	Name of Ship.	No., Date, and Port of Registry.

No., Date, and Port of previous Registry (if any).

Whether British or Foreign Built.	Whether a Sailing or Steam Ship; and if a Steam Ship, how propelled.	Where Built.	When Built.	Name and Address of Builders.
*				

		Feet.	Tenths.
Number of decks .	Length from fore part of stem under the bowsprit, to the aft side of the head of the stern post		
Number of masts .			
Rigged . . .	Main breadth to outside of plank . . .		
Stern . . .	Depth in hold from tonnage deck to ceiling at midships		
Build			
Galleries . . .	Depth in hold from upper deck to ceiling at midships, in the case of three decks and upwards		
Head			
Framework . .	Length of engine room (if any) . . .		

* If foreign built, add "and her foreign name is ." If foreign, and time and place of build unknown, insert "FOREIGN." "Time and place of build are unknown to the declarant;" *or*, if a condemned ship, insert "Condemned in the Court of" [*naming the Court*] "on the day of ."

PARTICULARS OF ENGINES (IF ANY).

No. of Engines.	Description.	Whether British or Foreign made.	When made.	Name and Address of Makers.	Diameter of Cylinders.	Length of Stroke.	No. of Horses' Power (combined).

PARTICULARS OF TONNAGE.

GROSS TONNAGE.	No. of Tons.	DEDUCTIONS ALLOWED.	No. of Tons.
Under tonnage deck . . .		On account of space required for propelling power . . .	
Closed-in spaces above the tonnage deck, if any		On account of spaces occupied by seamen or apprentices, and appropriated to their use, and kept free from goods or stores of every kind, not being the personal property of the crew .	
Space or spaces between decks		These spaces are the following, viz. :—	
Poop			
Forecastle			
Round house			
Other closed-in spaces, if any, as follows :—			
Gross tonnage . .			
Deductions, as per contra . . .			
Registered tonnage .		Total deductions . .	

We ,* the *owners* of the ship above described, hereby revoke the power of mortgaging (or selling) the said ship given *by us* to † by a certificate of mortgage (or sale) dated the day of .

In witness whereof we have hereunto subscribed our names and affixed our seals, this day of .

(L.S.) *E. F.* of
(L.S.) *G, H.* of
&c.

I *M. N.*, Registrar of , hereby certify that the said *owners* have executed this power of revocation in manner above appearing.

(Signed) Registrar.

No stamp duty is required for this form (see s. 9, p. 10). It has hardly ever been used.

* Alter according to circumstances the words printed in *italics*.
† Insert names of attornies.

Registry anew and Transfer of Registry.

§§ 84-86.

Alteration in ship to be registered.

84. Whenever any registered ship is so altered as not to correspond with the particulars relating to her tonnage or description contained in the register-book, then, if such alteration is made at a port where there is a registrar, the registrar of such port, but if made elsewhere, the registrar of the first port having a registrar at which the ship arrives after her alteration, shall, on application made to him, and on the receipt of a certificate from the proper surveyor specifying the nature of such alteration, either retain the old certificate of registry and grant a new certificate of registry containing a description of the ship as altered, or indorse on the existing certificate a memorandum of such alteration, and subscribe his name to such indorsement; and the registrar to whom such application as aforesaid is made, if he is the registrar of the port of registry of the ship, shall himself enter in his register-book the particulars of the alteration so made, and the fact of such new certificate having been granted, or indorsement having been made on the existing certificate; but if he is not such last-mentioned registrar, he shall forthwith report such particulars and facts as aforesaid, accompanied by the old certificate of registry in cases where a new one has been granted, to the registrar of the port of registry of the ship, who shall retain such old certificate (if any), and enter such particulars and facts in his register-book accordingly.

On alteration registry anew may be required.

85. When the registrar to whom application is made in respect of any such alteration as aforesaid is the registrar of the port of registry, he may, if he thinks fit, instead of registering such alteration, require such ship to be registered anew in manner hereinbefore directed on the first registry of a ship, and if he is not such registrar as lastly hereinbefore mentioned he may nevertheless require such ship to be registered anew, but he shall in such last-mentioned case grant a provisional certificate, or make a provisional indorsement of the alteration made in manner hereinbefore directed in cases where no registry anew is required, taking care to add to such certificate or indorsement a statement that the same is made provisionally, and to insert in his report to the registrar of the port of registry of the ship a like statement.

Grant of provisional cer-

86. Every such provisional certificate, or certificate pro-

visionally indorsed, shall, within ten days after the first subsequent arrival of the ship at her port of discharge in the United Kingdom, if registered in the United Kingdom, or, if registered elsewhere, at her port of discharge in the British possession within which her port of registry is situate, be delivered up to the registrar thereof, who shall thereupon cause such ship to be registered anew in the same manner in all respects as hereinbefore required on the first registry of any ship.

Certificate in respect of alteration.

87. On failure of such registry anew of any ship or registry of alteration of any ship so altered as aforesaid, such ship shall be deemed not duly registered, and shall no longer be recognised as a British ship.

Consequence of omission to register anew.

88. If upon any change of ownership in any ship the owner or owners desire to have such ship registered anew, although such registry anew is not required by this Act, it shall be lawful for the registrar of the port at which such ship is already registered, on the delivery up to him of the existing certificate of registry, and on the other requisites to registry, or such of them as the registrar thinks material, being duly complied with, to make such registry anew, and grant a certificate thereof.

On change of owners, registry anew may be granted, if required.

89. The registry of any ship may be transferred from one port to another upon the application of all parties appearing on the register to be interested in such ship, whether as owners or mortgagees, such application to be expressed by a declaration in writing made and subscribed, if the party so required to make and subscribe the same resides at or within five miles of the custom house of the port from which such ship is to be transferred, in the presence of the registrar of such port, but if beyond that distance in the presence of any registrar or of any justice of the peace.

Registry may be transferred from port to port.

90. Upon such application being made as is hereinbefore mentioned, and upon the delivery to him of the certificate of registry, the registrar of the port at which such ship is already registered shall transmit to the registrar of the port at which such ship is intended to be registered notice of such application having been made to him, together with a true copy of all particulars relating to such ship, and the names of all the parties appearing by his book to be interested as owners or mortgagees in such ship; and such last-mentioned registrar

Manner of transfer of registry.

§§ 89-94. shall, upon the receipt of such notice, enter all such particulars and names in his book of registry, and grant a fresh certificate of registry, and thenceforth such ship shall be considered as registered at and belonging to such last-mentioned port, and the name of such last-mentioned port shall be substituted on the stern of such ship in lieu of the name of the port previously appearing thereon.

Delivery of certificate upon transfer of registry.

18 & 19 Vict. c. 91, s. 12.—Upon the transfer of the registry of a ship from one port to another, the certificate of registry required by the 19th section of the Merchant Shipping Act, 1854, to be delivered up for that purpose, may be delivered up to the registrar of either of such ports.

Restrictions on re-registration of abandoned ships.

36 & 37 Vict. c. 85, s. 6.—Where a ship has ceased to be registered as a British ship by reason of having been wrecked or abandoned, or for any reason other than capture by the enemy or transfer to a person not qualified to own a British ship, such ship shall not be registered until she has, at the expense of the applicant for registration, been surveyed by one of the surveyors appointed by the Board of Trade and certified by him to be seaworthy.

Transfer of registry not to affect rights of owners.

91. The transfer of the registry of any ship in manner aforesaid shall not in any way affect the rights of the several persons interested either as owners or mortgagees in such ship, but such rights shall in all respects be maintained and continue in the same manner as if no such transfer had been effected.

Registry, Miscellaneous.

Inspection of register books.

92. Every person may, upon payment of a fee to be fixed by the Registrar General of Shipping and Seamen, not exceeding one shilling, have access to the register-book for the purpose of inspection at any reasonable time during the hours of official attendance of the registrar.

Indemnity to registrar.

93. No registrar shall be liable to damages or otherwise for any loss accruing to any person by reason of any act done or default made by him in his character of registrar, unless the same has happened through his neglect or wilful act.

Return to be made to Registrar General of Shipping and Seamen.

94. Every registrar in the United Kingdom shall, at the expiration of every month, and every other registrar shall without delay, or at such stated times as may be fixed by the Registrar General of Shipping and Seamen, transmit to the Registrar General of Shipping and Seamen a full return in such

form as he may direct of all registries, transfers, transmissions, mortgages, and other dealings with ships which have been registered by or communicated to them in their character of registrars, and the names of the persons who have been concerned in the same, and such other particulars as may be directed by the said Registrar.

Application of fees.

95. All fees authorised to be taken under the Second Part of this Act shall, if taken in any part of the United Kingdom, be applied in payment of the general expenses of carrying into effect the purposes of such Second Part, or otherwise as the Treasury may direct, but if taken elsewhere shall be disposed of in such way as the executive government of the British possession in which they are taken may direct.

Commissioners of Customs to provide and with consent of Board of Trade may alter forms and issue instructions.

96. The Commissioners of Customs shall cause the several forms required or authorised to be used by the Second Part of this Act, and contained in the schedule hereto, to be supplied to all registrars within Her Majesty's dominions for distribution to the several persons requiring to use the same, either free of charge, or at such moderate prices as they may from time to time direct; and the said Commissioners, with the consent of the Board of Trade, may from time to time make such alterations in the forms contained in the schedule hereto as it may deem requisite, but shall, before issuing any altered form, give such public notice thereof as may be necessary in order to prevent inconvenience; and the said Commissioners may also, with such consent as aforesaid, for the purposes of carrying into effect the provisions contained in the Second Part of this Act, give such instructions as to the manner of making entries in the register-book, as to the execution and attestation of powers of attorney, as to any evidence to be required for identifying any person, and generally as to any act or thing to be done in pursuance of the Second Part of this Act, as they may think fit.

Forms of instruments.

18 & 19 Vict. c. 91, s. 11.—In any case in which any bill of sale, mortgage, or other instrument for the disposal or transfer of any ship or any share or shares therein, or of any interest therein, is made in any form or contains any particulars other than the form and particulars prescribed and approved for the purpose by or in pursuance of the Merchant Shipping Act, 1854, no registrar shall be required to record the same without the express directions of the Commissioners of Her Majesty's Customs.

§§ 97-99. Unless these instruments are made in the prescribed forms, they are not exempt from stamp duty (see s. 9, p. 10).

Power to registrar to dispense with declarations and other evidence.

97. Whenever in any case in which under the Second Part of this Act any person is required to make a declaration on behalf of himself or of any body corporate, or any evidence is required to be produced to the registrar, it is shown to the satisfaction of the registrar that from any reasonable cause such person is unable to make the declaration, or that such evidence cannot be produced, it shall be lawful for the registrar, with the sanction of the Commissioners of Customs, and upon the production of such other evidence, and subject to such terms as they may think fit, to dispense with any such declaration or evidence.

Power for Commissioners or Governor in special cases to grant a pass to a ship not registered.

98. In cases where it appears to the Commissioners of Customs, or to the Governor or other person administering the government of any British possession, that by reason of special circumstances it would be desirable that permission should be granted to any British ship to pass, without being previously registered, from one port or place in Her Majesty's dominions to any other port or place within the same, it shall be lawful for such Commissioners or Governor or other person to grant a pass accordingly, and such pass shall for the time and within the limits therein mentioned have the same effect as a certificate of registry.

Provision for cases of infancy or other incapacity.

99. If any person interested in any ship or any share therein is, by reason of infancy, lunacy, or other inability, incapable of making any declaration or doing anything required or permitted by this Act to be made or done by such incapable person in respect of registry, then the guardian or committee, if any, of such incapable person, or if there be none, any person appointed by any court or judge possessing jurisdiction in respect of the property of incapable persons, upon the petition of any person on behalf of such incapable person, or of any other person interested in the making such declaration or doing such thing, may make such declaration, or a declaration as nearly corresponding thereto as circumstances permit, and do such thing in the name and on behalf of such incapable person; and all acts done by such substitute shall be as effectual as if done by the person for whom he is substituted.

Declarations required.

A declaration of ownership is required before a person can be registered as owner of any British ship, or share in it (see s. 38, p. 36). A decla-

ration is also required on behalf of a body corporate (see s. 39, p. 39). Declarations must also be made by transferrees of ships, or shares in them, whether the transferrees are individuals or bodies corporate (see s. 56, p. 56). If the property in a ship is transmitted by the death or bankruptcy of the previous owner, or the marriage of a female owner, a special declaration must be made (see s. 58, p. 61). As to who may be owners of British ships (see s. 18, p. 14). No notice of trusts can be entered in the register book (see s. 43, p. 43); but equitable rights may be enforced against owners (see 25 & 26 Vict. c. 63, s. 3, under s. 43, p. 43).

Equities.

100. Whenever any person is beneficially interested, otherwise than by way of mortgage, in any ship or share therein registered in the name of some other person as owner, the person so interested shall, as well as the registered owner, be subject to all pecuniary penalties imposed by this or by any other Act on owners of ships or shares therein, so nevertheless that proceedings may be taken for the enforcement of any such pecuniary penalties against both or either of the aforesaid parties, with or without joining the other of them.

Liabilities of owners beneficially interested.

For the meaning of "beneficial interest," see 25 & 26 Vic. c. 63, s. 3, under s. 43, p. 43.

Forgery.

101. Any person who forges, assists in forging, or procures to be forged, fraudulently alters, assists in fraudulently altering, or procures to be fraudulently altered, any register-book, certificate of surveyor, certificate of registry, declaration of ownership, bill of sale, instrument of mortgage, certificate of mortgage or sale, or any entry or indorsement required by the Second Part of this Act to be made in or on any of the above documents, shall for every such offence be deemed to be guilty of felony.

Punishment for forgery.

National Character.

The penal consequences of sailing under false colours are detailed in the following sections. The flag which the ship carries is notice to all the world, that the master's authority is conferred by the law of that flag, and that his mandate is contained in the law of the country whose flag he sails under. Those who deal with him must, at their peril, make themselves acquainted with that law (*c*).

Flag is notice of master's authority.

102. No officer of customs shall grant a clearance or transire for any ship until the master of such ship has declared to

National character of ship

(*c*) *Lloyd* v. *Guibert*, 33 L. J. Q. B. 241; *in Cam. Scac.* L. R. 1 Q. B. 115.

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such officer the name of the nation to which he claims that she belongs, and such officer shall thereupon inscribe such name on the clearance or transire; and if any ship attempts to proceed to sea without such clearance or transire, any such officer may detain her until such declaration is made.

to be declared before clearance.

Penalties:

103. The offences hereinafter mentioned shall be punishable as follows (that is to say):

For unduly assuming a British character.

(1.) If any person uses the British flag and assumes the British national character on board any ship owned in whole or in part by any persons not entitled by law to own British ships, for the purpose of making such ship appear to be a British ship, such ship shall be forfeited to Her Majesty, unless such assumption has been made for the purpose of escaping capture by an enemy or by a foreign ship of war in exercise of some belligerent right; and in any proceeding for enforcing any such forfeiture the burden of proving a title to use the British flag and assume the British national character shall lie upon the person using and assuming the same:

For concealment of British or assumption of foreign character.

(2.) If the master or owner of any British ship does or permits to be done any matter or thing, or carries or permits to be carried any papers or documents, with intent to conceal the British character of such ship from any person entitled by British law to inquire into the same, or to assume a foreign character, or with intent to deceive any such person as lastly hereinbefore mentioned, such ship shall be forfeited to Her Majesty; and the master, if he commits or is privy to the commission of the offence, shall be guilty of a misdemeanour:

For acquiring ownership if unqualified.

(3.) If any unqualified person, except in the case of such transmitted interests as are hereinbefore mentioned, acquires as owner any interest, either legal or beneficial, in a ship using a British flag and assuming the British character, such interest shall be forfeited to Her Majesty:

For false declaration of ownership.

(4.) If any person, on behalf of himself or any other person or body of persons, wilfully makes a false declaration touching the qualification of himself or such other person or body of persons to own British ships or any

shares therein, the declarant shall be guilty of a misdemeanour; and the ship or share in respect of which such declaration is made, if the same has not been forfeited under the foregoing provision, shall to the extent of the interest therein of the person making the declaration, and unless it is shown that he had no authority to make the same, of the parties on behalf of whom such declaration is made, be forfeited to Her Majesty: § 103.

Officers authorised to seize ships.

And in order that the above provisions as to forfeitures may be carried into effect, it shall be lawful for any commissioned officer on full pay in the military or naval service of Her Majesty, or any British officer of customs, or any British consular officer to seize and detain any ship which has, either wholly or as to any share therein, become subject to forfeiture as aforesaid, and to bring her for adjudication before the High Court of Admiralty in England or Ireland, or any court having admiralty jurisdiction in Her Majesty's dominions; and such court may thereupon make such order in the case as it may think fit, and may award to the officer bringing in the same for adjudication, such portion of the proceeds of the sale of any forfeited ship or share as it may think right.

Enforcing detention of ship.

39 & 40 Vict. c. 80, s. 34.—Where under the Merchant Shipping Acts, 1854 to 1876, or any of them, a ship is authorised or ordered to be detained, any commissioned officer on full pay in the naval or military service of Her Majesty, or any officer of the Board of Trade, or customs, or any British consular officer may detain the ship, and if the ship after such detention, or after service on the master of any notice of or order for such detention proceeds to sea before it is released by competent authority, the master of the ship, and also the owner, and any person who sends the ship to sea, if such owner or person be party or privy to the offence, shall forfeit and pay to Her Majesty a penalty not exceeding one hundred pounds.

Carrying officer to sea.

Where a ship so proceeding to sea takes to sea when on board thereof in the execution of his duty any officer authorised to detain the ship, or any surveyor or officer of the Board of Trade or customs, the owner and master of the ship shall each be liable to pay all expenses of and incidental to the officer or surveyor being so taken to sea, and also a penalty not exceeding one hundred pounds, or, if the offence is not prosecuted in a summary manner, not exceeding ten pounds for every day until the officer or surveyor returns, or until such time as would enable him, after leaving the ship, to return to the port from

§§ 104-106.

which he is taken, and such expenses may be recovered in like manner as the penalty.

Officer not liable for any seizure made on reasonable grounds.

104. No such officer as aforesaid shall be responsible, either civilly or criminally, to any person whomsoever, in respect of the seizure or detention of any ship that has been seized or detained by him in pursuance of the provisions herein contained, notwithstanding that such ship is not brought in for adjudication, or, if so brought in, is declared not to be liable to forfeiture, if it is shown to the satisfaction of the judge or court before whom any trial relating to such ship or such seizure or detention is held, that there were reasonable grounds for such seizure or detention; but if no such grounds are shown, such judge or court may award payment of costs and damages to any party aggrieved, and make such other order in the premises as it thinks just.

Penalty for carrying improper colours.

105. If any colours usually worn by Her Majesty's ships, or any colours resembling those of Her Majesty, or any distinctive national colours, except the red ensign usually worn by merchant ships, or except the union jack with a white border, or if the pendant usually carried by Her Majesty's ships or any pendant in anywise resembling such pendant, are or is hoisted on board any ship or boat belonging to any subject of Her Majesty without warrant for so doing from Her Majesty or from the Admiralty, the master of such ship or boat or the owner thereof, if on board the same, and every other person hoisting or joining or assisting in hoisting the same, shall for every such offence incur a penalty not exceeding 500*l.*; and it shall be lawful for any officer on full pay in the military or naval service of Her Majesty, or any British officer of the customs, or any British consular officer, to board any such ship or boat, and to take away any such jack, colours, or pendant; and such jack, colours, or pendant, shall be forfeited to Her Majesty.

Effect of declaration in the Act that a ship shall not be recognised as a British ship.

106. Whenever it is declared by this Act that a ship belonging to any person or body corporate qualified according to this Act to be owners of British ships shall not be recognised as a British ship, such ship shall not be entitled to any benefits, privileges, advantages, or protection usually enjoyed by British ships, and shall not be entitled to use the British flag or assume the British national character; but, so far as regards

the payment of dues, the liability to pains and penalties, and the punishment of offences committed on board such ship, or by any persons belonging to her, such ship shall be dealt with in the same manner in all respects as if she were a recognised British ship.

Void register no exemption from consequence of carrying the flag.

If a ship's register is void she will not be entitled to the privileges of a British ship; but she remains subject to the consequences of having adopted the British flag. Thus where a ship, that sailed under the British flag, engaged in the slave trade, and was seized and condemned, the owner was not allowed to prove that the ship's register was void, and that he himself was not a British subject. It was held that the fact of her having carried the British flag was of itself sufficient to ensure her condemnation for having been engaged in the slave trade, for the register flag and pass of a ship carry with them a presumption of national character that they are true and correct (*d*).

Evidence.

Copies of registers and declarations to be admissible in evidence, and to be *primâ facie* proof of certain things.

107. Every register of or declaration made in pursuance of the Second Part of this Act in respect of any British ship may be proved in any court of justice, or before any person having by law or by consent of parties authority to receive evidence, either by the production of the original or by an examined copy thereof, or by a copy thereof purporting to be certified under the hand of the registrar or other person having the charge of the original; which certified copies he is hereby required to furnish to any person applying at a reasonable time for the same, upon payment of one shilling for each such certified copy; and every such register or copy of a register, and also every certificate of registry of any British ship, purporting to be signed by the registrar or other proper officer, shall be received in evidence in any court of justice or before any person having by law or by consent of parties authority to receive evidence as *primâ facie* proof of all the matters contained or recited in such register when the register or such copy is produced, and of all the matters contained in or indorsed on such certificate of registry, and purporting to be authenticated by the signature of a registrar, when such certificate is produced.

General register books in London.

18 & 19 Vict. c. 91, s. 15.—The copy or transcript of the register of any British ship which is kept by the chief regis-

(*d*) *The Laura; Dionisio* v. *The Queen*, 3 Moo. P. C. (N. S.) 181.

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trar of shipping at the Custom-house in London, or by the Registrar General of Shipping and Seamen under the direction of Her Majesty's Commissioners of Customs or of the Board of Trade, shall have the same effect to all intents and purposes as the original register of which the same is a copy or transcript.

Saving Clause.

Saving of 3 & 4 Vict. c. 56, relating to East Indian ships.

108. Nothing in this Act contained shall repeal or affect an Act passed in the session of Parliament holden in the third and fourth years of the reign of Her present Majesty, chapter fifty-six, intituled An Act further to regulate the trade of ships built and trading within the limits of the East India Company's charter.

Unrepealed parts of 3 & 4 Vict. c. 56.

Sections 8 and 9 are the only parts of this Act still unrepealed. Section 8 gives power to certain Indian governors, &c., to stay proceedings in certain cases. Section 9 gives the limits of the East India Company's charter for the purposes of that Act.

PART III.

INTRODUCTION.

Bottomry and Respondentia.

Definition of bottomry.

BOTTOMRY is an agreement entered into by the owner of a ship or his agent, whereby in consideration of a sum of money advanced for the use of the ship, the borrower undertakes to repay the same with interest, if the ship terminate her voyage successfully, and binds or hypothecates the ship for the performance of his contract (*a*). It is called bottomry from the bottom or keel of the ship being used figuratively for the whole body thereof (*b*). Respondentia is the hypothecation of the cargo. (As to the ordinary mortgage of a ship, see secs. 66—73, p. 67.) The master is allowed to raise money on bottomry, that is, on the security of the ship, without the authority of the owners. But the money must be raised for some purpose connected with the ship, and there must exist a *necessity* for raising it by this means. The master has not *primâ facie* any authority to pledge the vessel, and he is only justified in doing so when his owner's or his own credit fail to procure him the requisite funds,

Respondentia.

When allowed.

Necessity for it.

(*a*) Smith's Mercantile Law (8th ed.), 409; *The Atlas*, 2 Hagg. Ad. 53.
(*b*) Abbott on Shipping (11th ed.), 125.

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and the repairs or stores for the ship are absolutely necessary (*c*). "Necessity," said Lord Stowell, "is the vital principle of hypothecation, and the Court of Admiralty will consider every circumstance, will go into the whole history of the voyage in order to determine whether there be that necessity without which an instrument of hypothecation is void" (*d*).

Only allowed on failure of credit.

The want which exacts the loan must be such as, if not supplied, would prevent the prosperous completion of the voyage (*e*); and the necessity must be some physical one, that is, either the ship is damaged, or not victualled, or in such a condition that there will be danger if she continues her voyage (*f*). Where a ship was arrested under a foreign law for an antecedent debt due from her owners, and the master gave a bottomry bond to enable him to release her from arrest, and prosecute the voyage, the bond was not sustained by the Admiralty Court, the necessity not being a physical one (*f*).

Allowed when voyage cannot be completed without.

Not allowed for antecedent debts.

The master may also under stringent necessity, borrow money on the security of the cargo, and the character of agent for the shippers is thereby imposed on him by the existence of the necessity (*g*). He must if possible communicate with the owners of the property he pledges, whether it be the ship or cargo (*h*); and the bond will be void if either the master or the lender could have communicated with the owners, but did not do so (*i*). In order that a bottomry bond may be valid, the repayment of the money lent must depend upon the safe arrival of the ship (*k*). The lender takes the risk of the vessel performing her voyage in safety. If she is lost on such voyage, the bond is forfeited, and he loses his principal and interest (*l*). This is called a maritime risk, and in order to counterbalance it, a high premium, called maritime interest, is usually charged on bottomry bonds. The rate of interest is evidence of what risk was intended (*m*).

Pledging of cargo.

Owners should be communicated with.

Loan must be at risk on the ship.

The contract of bottomry gives the lender a maritime lien on the ship; it does not transfer the property in her, but only gives the creditor a claim upon the ship, to be carried into effect by legal process (*n*). This lien continues as long as the ship exists at all, and the bondholder may have the very last plank sold for his benefit (*o*).

Bottomry gives a maritime lien.

(*c*) *Stainbank* v. *Fenning*, 11 C. B. 51. See Part IX., p. 419, as to the master pledging the owner's credit for necessaries.

(*d*) *The Hersey*, 3 Hagg. Ad. 404; *The Nelson*, 1 Hagg. Ad. 175.

(*e*) Maclachlan on Shipping (2nd ed.), 49.

(*f*) *The Osmanli*, 3 W. Rob. 198.

(*g*) *The Gratitudine*, 3 C. Rob. 240; *Pope* v. *Nickerson*, 3 Story (Amer. Rep.), 465; *The Ship Packet*, 3 Mason (Amer. Rep.), 255.

(*h*) *The Bonaparte*, 8 Moo. P. C. 459; *The Hamburg*, B. & L. 253; *Pike* v. *Balch*, 38 Maine (Amer. Rep.), 302.

(*i*) *The Panama*, L. R. 2 A. & E. 390; and see *The Lizzie*, L. R. 2 A. & E. 259.

(*k*) *Stainbank* v. *Fenning*, 11 C. B. 51; *Stainbank* v. *Shepherd*, 13 C. B. 418.

(*l*) *The Boddingtons*, 2 Hagg. Ad. 422; *The Draco*, 2 Sumner (Amer. Rep.), 157; *Leland* v. *The Medora*, 2 W. & M. (Amer. Rep.), 92.

(*m*) *The Emancipation*, 1 W. Rob. 124; *The Alexander*, 1 Dods. Ad. 279.

(*n*) Abbott on Shipping (11th ed.), 128; *Johnson* v. *Shippen*, 2 Ld. Raym. 984; *Blaine* v. *The Charles Carter*, 4 Cranch (Amer. Rep.), 328.

(*o*) *The Great Pacific*, L. R. 2 A. & E. 381; L. R. 2 P. C. 516; *The Catharina*, 15 Jur. 232. See, as to maritime liens in general, Part IX., p. 417.

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Original security cannot be changed.

If the lender has originally advanced the money on the personal security of the owner or master, he cannot afterwards convert this into a bottomry security; and a person who owes money to the owner cannot lend him money on bottomry until he has paid off his debt, or if he does, the bond will be invalid to the extent of his debt to the owner (*p*); for it is an established principle that a bottomry bond may be good in part, and bad in part (*q*). But any one who has lent money on the personal security of the master or owner, may afterwards make further advances on the security of the ship (*r*); and a bottomry bond may be given as collateral security with bills of exchange, the bond to be discharged if the bills are paid (*s*).

Bond may be good in part.

Further advances.

Collateral security.

Hypothecation by owner.

The ship's agent may lend money on this security, after he has given the master an opportunity of obtaining it elsewhere (*t*); and the owner himself may borrow money on bottomry if he is at a *foreign* port, but if he borrows on the security of the ship when he is at his home port, this is not bottomry, but a mortgage, and the transaction is then subject to all the rules relating to ordinary mortgages of ships (*u*). In the American Courts such a dealing by the owner is not excluded from the term bottomry (*x*).

Invalid bonds.

If a bond is declared invalid by the Admiralty Court, the lender loses his money entirely, as no other court will entertain his claim, it being beyond the ordinary powers of the master to raise money in this manner (*y*). When several bottomry bonds are given, the last is paid off first, and so on in the inverse order in which they were given, because it is considered that the previous lenders would have entirely lost their security by the voyage not being completed, if the last lender had not advanced the money, and so enabled the master to arrive home (*z*). If a bond has been given on ship, freight, and cargo, the ship and freight must be first exhausted to satisfy the bond before the cargo is touched (*a*).

A later bond is preferred to a former one.

FORMS FOR BOTTOMRY AND RESPONDENTIA (*aa*).

Bottomry Bond on Ship and Freight.

Know all men by these presents, that I, A. B., master of the ship, "Albany," of London, am held and firmly bound unto C. D., of Bombay,

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(*p*) *The Hebe*, 2 W. Rob. 146.

(*q*) *The Prince George*, 4 Moo. P. C. 21; *The Heart of Oak*, 1 W. Rob. 204; *The Hunter*, Ware (Amer. Rep.), 249; *The Virgin*, 8 Pet. Ad. (Amer. Rep.), 538.

(*r*) *The Augusta*, 1 Dods. Ad. 283; *The Osmanli*, 3 W. Rob. 217.

(*s*) *The Nelson*, 1 Hagg. Ad. 169; *The Onward*, L. R. 4 A. & E. 38; *The Hunter*, Ware (Amer. Rep.), 249.

(*t*) *The Lord Cochrane*, 2 W. Rob. 331.

(*u*) *The Helgeland*, Swa. 495; *The Duke of Bedford*, 2 Hagg. Ad. 295.

(*x*) *The Royal Arch*, Swa. 277; *Greely* v. *Waterhouse*, 1 App. (Amer. Rep.), 9; *Hurry* v. *Ship John and Alice*, 1 Wash. C. C. (Amer. Rep.), 293.

(*y*) *Stainbank* v. *Shepherd*, 13 C. B. 418; the "Judicature Act, 1873" (36 & 37 Vict. c. 66), s. 34.

(*z*) *The Rhadamanthe*, 1 Dods. Ad. 204; *The Eliza*, 3 Hagg. Ad. 89; *The Exeter*, 1 C. Rob. 176; *Furniss* v. *Brig Magoun*, Olcott (Amer. Rep.), 55.

(*a*) *The Priscilla*, Lush. 1.

(*aa*) These forms are taken from Maclachlan on Shipping (2nd ed.), 879 *et seq.*

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merchant, in the sum of lawful British money, to be paid to the said C. D., or his certain attorney, executors, administrators, or assigns, for which payment well and truly to be made, I bind myself, my heirs, executors, and administrators, and also the said ship, her tackle, apparel, and furniture, and the freight to be earned by her on the voyage after mentioned, firmly by these presents. Sealed with my seal. Dated this day of one thousand eight hundred and

Whereas the said ship is lately arrived in the roadstead of Bombay from London, having on her said voyage sustained damages [*describe the damage*], and being in want of repairs and provisions to enable her to proceed on her voyage from Bombay to London, for which port she is now bound and about to return, and the said A. B., in order to be enabled to procure the said repairs and provisions, and to pay for the same and for the lawful and necessary disbursements and expenses of the said ship at the said port of Bombay, hath requested the said C. D. to lend the sum of for the aforesaid purposes; and the said C. D. hath accordingly lent the said sum for the aforesaid purposes, on the hazard and adventure of the said vessel on her said intended voyage from Bombay to London.

Now the condition of the above obligation is such, that if the said ship do and shall with all reasonable and convenient speed, sail from the port of Bombay aforesaid, on the said intended voyage to London, and that without deviation (the perils, damages, accidents and casualties of the seas and navigation excepted); and if the above bounden A. B., his heirs, executors, or administrators, or the owners of the said ship, do and shall within ten days after the said vessel shall arrive at London aforesaid, well and truly pay or cause to be paid unto the said C. D., his agent, attorney, executors, administrators, or assigns, the said sum of lawful British money, together with pounds per centum, bottomry premium thereon; or if on the said voyage the said vessel shall be utterly lost, cast away, or destroyed, in consequence of fire, enemies, pirates, storms, or other the unavoidable perils, dangers, accidents, or casualties of the seas and navigation, to be sufficiently shown or proved by the said A. B., his executors or administrators, or by the owners of the said ship, their executors or administrators: then the above written bond or obligation to be void: otherwise to remain in full force and virtue.

A. B. (Seal.)

Signed, sealed, and delivered, where no stamped paper is to be had, in the presence of

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BOTTOMRY BILL, ON SHIP, FREIGHT [AND CARGO].

To all men to whom these presents shall come. I, A. B., of Bengal [part owner and], master of the ship called the "Exeter," of the burden of five hundred tons and upwards, now riding at anchor in Table Bay, at the Cape of Good Hope, send greeting;

Whereas I, the said A. B., [part owner and] master of the aforesaid ship called the "Exeter," now in prosecution of a voyage from Bengal to the port of London, having put into Table Bay for the purpose of procuring provisions and other supplies necessary for the continuation and performance of the voyage aforesaid, am at this time necessitated to take up upon the adventure of the said ship called the "Exeter," the sum of 1000*l.* lawful monies of Great Britain, for setting the said ship

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to sea, and furnishing her with provisions and necessaries for the said voyage, which sum C. D. of the Cape of Good Hope, master attendant, hath at my request lent unto me, and supplied me with at the rate of 1220*l.* sterling for the said 1000*l.*, being at the rate of 122*l.* for every 100*l.* advanced as aforesaid, during the voyage of the said ship from Table Bay to London. Now know ye, that I, the said A. B., by these presents, do, for me, my executors, and administrators, covenant and grant to and with the said C. D., that the said ship shall, [with the first convoy that shall offer for England] [or, with all reasonable and convenient speed] after the date of these presents, sail and depart for the port of London, there to finish the voyage aforesaid, and that, without deviation during the course thereof, (the perils, damages, accidents, and casualties of the seas and navigation excepted). And I, the said A. B., in consideration of the sum of 1000*l.* sterling to me in hand paid by the said C. D. at and before the sealing and delivery of these presents, do hereby bind myself, my heirs, executors, and administrators, my goods and chattels, and particularly the said ship, the tackle and apparel of the same, and also the freight of the said ship which is or shall become due for the aforesaid voyage from Bengal to the port of London, [and also the cargo shipped on board the said vessel for the voyage aforesaid] to pay unto the said C. D., his executors, administrators or assigns, the sum of 1220*l.* of lawful British money, within thirty days next after the safe arrival of the said ship at the port of London from the same intended voyage.

And I, the said A. B., do, for me, my executors, and administrators, covenant and grant to and with the said C. D., his executors and administrators, by these presents, that I, the said A. B., at the time of sealing and delivering of these presents, am [a true and lawful part owner and] master of the said ship, and have power and authority to charge and engage the said ship with her freight [and cargo] as aforesaid, and that the said ship, with her freight [and cargo], shall at all times after the said voyage, be liable and chargeable for the payment of the said 1220*l.* according to the true intent and meaning of these presents.

And lastly, it is hereby declared and agreed by and between the said parties to these presents, that in case the said ship shall be utterly lost, miscarry, be cast away, or otherwise destroyed in consequence of fire, enemies, pirates, and any other perils and dangers of the seas and navigation, before her arrival at the said port of London from the said intended voyage, that then the payment of the said 1220*l.* shall not be demanded, or be recoverable by the said C. D., his executors, administrators, or assigns, but shall cease and determine, and the loss thereby be wholly borne and sustained by the said C. D., his executors and administrators, and that then and from thenceforth every act, matter, and thing herein mentioned on the part and behalf of the said A. B. shall be void, anything herein contained to the contrary notwithstanding.

In witness whereof the parties have interchangeably set their hands and seals to four bonds of this tenor and date, one of which being paid, the others to be null and void.

At the Cape of Good Hope, this fifteenth day of November, in the year of our Lord one thousand eight hundred and .

Witness, { E. F. G. H. I. K. } A. B. (L. S.)

RESPONDENTIA BOND. § 108.

KNOW all men by these presents, that I, A. B., master of the ship "Albany," am held and firmly bound unto C. D., of Odessa, merchant, in the sum of lawful British money, to be paid to the said C. D., his certain attorney, or his executors, administrators, or assigns, to which payment I bind myself firmly by these presents. Sealed with my seal. Dated this day of one thousand eight hundred and .

Whereas the said ship "Albany," having laden on board a cargo of corn, was accidentally stranded and suffered great damage, and was taken into the harbour of Odessa by salvors, and her cargo discharged, some being damaged; and whereas, great expense for salvage and other charges were necessarily incurred, and were charged on the said cargo, and which the said master was unable to pay; and whereas the said C. D. did contract and agree with the said A. B. to advance the sums of money necessary to enable him to pay the same charges and expenses upon the goods and merchandise, lately the cargo of the said ship "Albany," to be re-shipped and forwarded from Odessa to their destination, that is to say, to the port of London in England, it being expressly agreed before any part of such advance was made, that such advance should be by way of respondentia on the said cargo in the voyage last aforesaid; and whereas under and pursuant to the agreement last aforesaid the sum of was advanced for setting the said ship to sea, and furnishing her with provisions and necessaries for the said voyage, which sum C. D. of the Cape of Good Hope, master attendant, hath at my request lent unto me, and supplied me with at the rate of 122*l.* sterling for the said 100*l.*, being at the rate of 122*l.* for every 100*l.* advanced as aforesaid, during the voyage of the said ship from Table Bay to London. Now know ye, that I, the said A. B., by these presents, do, for me, my executors, and administrators, covenant and grant to and with the said C. D., that the said ship shall, [with the first convoy that shall offer for England] [*or*, with all reasonable and convenient speed] after the date of these presents, sail and depart for the port of London, there to finish the voyage aforesaid, and that, without deviation during the course thereof (the perils, damages, accidents, and casualties of the seas and navigation excepted). And I, the said A. B., in consideration of the sum of 1000*l.* sterling to me in hand paid by the said C. D. at and before the sealing and delivery of these presents, do hereby bind myself, my heirs, executors, and administrators, my goods and chattels, and particularly the said ship, the tackle and apparel of the same, and also the freight of the said ship which is or shall become due for the aforesaid voyage from Bengal to the port of London, [and also the cargo shipped on board the said vessel for the voyage aforesaid] to pay unto the said C. D., his executors, administrators, or assigns, the sum of 122*0l.* of lawful British money, within thirty days next after the safe arrival of the said ship at the port of London from the same intended voyage.

And I, the said A. B., do, for me, my executors, and administrators, covenant and grant to and with the said C. D., his executors and administrators, by these presents, that I, the said A. B., at the time of sealing and delivering of these presents, am [a true and lawful part owner and] master of the said ship, and have power and authority to charge and engage the said ship with her freight [and cargo] as afore-

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And lastly, it is hereby declared and agreed by and between the said parties to these presents, that in case the said ship shall be utterly lost, miscarry, be cast away, or otherwise destroyed in consequence of fire, enemies, pirates, and any other perils and dangers of the seas and navigation, before her arrival at the said port of London from the said intended voyage, that then the payment of the said 1220*l.* shall not be demanded, or be recoverable by the said C. D., his executors, administrators, or assigns, but shall cease and determine, and the loss thereby be wholly borne and sustained by the said C. D., his executors and administrators, and that then and from thenceforth every act, matter, and thing herein mentioned on the part and behalf of the said A. B. shall be void, anything herein contained to the contrary notwithstanding.

In witness whereof the parties have interchangeably set their hands and seals to four bonds of this tenor and date, one of which being paid, the others to be null and void.

At the Cape of Good Hope, this fifteenth day of November, in the year of our Lord one thousand eight hundred and .

Witness, { E. F. G. H. I. K. } A. B. (L. S.)

Sale of Ship by the Master.

When master may sell.

It is now settled law that in cases of extreme necessity the master may sell the ship abroad without authority from the owner (*b*); but he cannot be too careful in exercising this power, and a purchaser must be very careful in buying a ship under such circumstances, for unless he can prove that the sale was necessary, it will not bind the previous owner (*c*). The necessity must arise from some of the following circumstances: 1. The state and condition of the vessel; 2. The consequences of not proceeding to sell; 3. Want of facility of communication with the owners; 4. The resources of the master, or the total absence of all resources; 5. To some extent, the power of the master to avert a sale (*d*). The master should first try to raise money by bottomry, for the circumstances that will justify a sale, though of a like character, must be of a more pressing necessity than those which will justify a hypothecation (*e*). If, when the ship is totally unseaworthy, there be no means of repairing her, or if the repairs would cost more than the whole value of the ship when they were finished, the master may then sell

Necessity.

Bottomry should be tried first.

If ship is quite unseaworthy.

(*b*) *Hunter* v. *Parker*, 7 M. & W. 322; *The Schooner Tilton*, 5 Mason (Amer. Rep.), 465.

(*c*) *The Australia*, Swa. 484; 13 Moo. P. C. 132; *The Brig Sarah Ann*, 2 Sumner (Amer. Rep.), 206; affirmed on appeal, 13 Peters (Amer. Rep.), 387.

(*d*) *The Glasgow* or *The Ya Macraw*, Swa. 145; 28 L. T. 13; *The Margaret Mitchell*, Swa. 386.

(*e*) *The Bonita*, Lush. 252; 30 L. J. N. S. (Adm.) 145; *The Catherine*, 15 Jur. 232.

her (*f*). The general spread of telegraphy, by enabling the master to communicate at once with the owners, has greatly reduced the number of cases of necessity (*g*).

Invalid sales.

If the circumstances do not justify a sale, the possession of the ship will be restored to the original owner (*h*). Any fraud will vitiate the transaction, and when the necessity for a sale does exist, the master must act *bonâ fide*, and for the benefit of all concerned (*i*). If the owner disapproves of the sale, he must proceed with the greatest promptitude in taking measures to set it aside (*k*). The master may sell the ship so as to bind the insurers, but "if," says Mr. Arnold, "he come to the conclusion to sell hastily, either without sufficient examination into the state of the ship, or without having previously made every exertion in his power with the means then at his disposal to extricate her from the peril, he will not be justified in selling, even though the danger appear at the time exceedingly imminent" (*l*). The law of France does not allow the master to sell the vessel without the owner's authority, unless her total unseaworthiness is legally established, (*hors le cas d'innavigabilité légalement constatée*) (*m*). A magistrate, or a French consul, must judge of this unseaworthiness, and the authority of one of them is necessary for the validity of the sale (*n*).

Master must try every other means of preserving the ship.

French law.

Application.

Application of Part III. of Act.

109. The various provisions of the Third Part of this Act shall have the following applications, unless the context or subject matter requires a different application; (that is to say),

Returns for certain ships belonging to the United Kingdom.

So much of the Third Part of this Act as relates to the delivery or transmission of lists of crews to the Registrar-General of Shipping and Seamen shall apply to all fishing vessels belonging to the United Kingdom, whether employed exclusively on the coasts of the United Kingdom or not; to all ships belonging to the Trinity House, or the Commissioners of Northern Lighthouses, constituted as hereinafter mentioned, or the Commissioners of Irish Lights, and to all pleasure yachts, and to the owners, masters, and crews of such ships (*see sects.* 271 *to* 274, p. 232):

(*f*) *The Uniao Vencedora* or *The Gipsy*, 33 L. J. Adm. 195; 2 Mar. Law Cas. 146.

(*g*) *Gordon* v. *Massachusetts, Insurance Co.*, 19 Mass. (Amer. Rep.), 249; *Australian Steam Navigation Co.* v. *Morse*, L. R. 4 P. C. 222.

(*h*) *The Segredo* or *Eliza Cornish*, 1 Spinks, A. & R. 36.

(*i*) *The Bonita*, Lush. 252; 30 L. J. N. S. (Adm.) 145.

(*k*) *The Australia*, Swa. 486; 13 Moo. P. C. 132.

(*l*) *Cobequid Marine Insurance Co.* v. *Barteaux*, L. R. 6 P. C. 329; and see Arnold on Marine Insurance (2nd ed.), Vol. I. 333.

(*m*) Code de Commerce, Art. 237.

(*n*) Pardessus Droit Com. No. 606.

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Returns and wages of deceased seamen in certain colonial ships.

So much of the Third Part of this Act as relates to the delivery and transmission of lists of crews, and to the wages and effects of deceased seamen and apprentices, shall apply to all sea-going British ships, wherever registered, of which the crews are discharged, or whose final port of destination is in the United Kingdom, and to the owners, masters, and crews of such ships (*see sects.* 271—274, p. 232, *and sects.* 194—203, p. 175):

Shipping and discharging men in the United Kingdom.

So much of the Third Part of this Act as relates to the shipping and discharge of seamen in the United Kingdom shall apply to all sea-going British ships, wherever registered, and to the owners, masters, and crews of such ships (*see sects.* 146 *to* 176, p. 127):

Volunteering into the navy.

So much of the Third Part of this Act as relates to seamen volunteering into the royal navy shall apply to all sea-going British ships, wherever registered, and to the owners, masters, and crews of such ships, wherever the same may be (*see sects.* 214 *to* 220, p. 192):

Provisions applicable to colonial ships.

So much of the Third Part of this Act as relates to rights to wages and remedies for the recovery thereof; to the shipping and discharge of seamen in foreign ports; to leaving seamen abroad, and to the relief of seamen in distress in foreign ports; to the provisions, health, and accommodation of seamen; to the power of seamen to make complaints; to the protection of seamen from imposition; to discipline; to naval courts on the high seas and abroad; and to crimes committed abroad; shall apply to all ships registered in any of Her Majesty's dominions abroad, when such ships are out of the jurisdiction of their respective governments, and to the owners, masters, and crews of such ships:

As to whole of Part III. of Act.

And the whole of the Third Part of this Act shall apply to all sea-going ships registered in the United Kingdom, (except such as are exclusively employed in fishing on the coasts of the United Kingdom, and such as belong to the Trinity House, the Commissioners of Northern Lighthouses, or the Commissioners of Irish Lights, and also except pleasure yachts,) and also to all ships registered in any British possession and employed in trading or going between any place in the United Kingdom and

any place or places not situated in the possession in which such ships are registered, and to the owners, masters, and crews of such ships respectively, wherever the same may be.

Exemptions.

Third part of Act to apply to fishing boats, light-house vessels, and pleasure yachts, with certain exceptions.

25 & 26 Vict. c. 63, s. 13.—The following vessels; that is to say,

(1.) Registered sea-going ships exclusively employed in fishing on the coasts of the United Kingdom;

(2.) Sea-going ships belonging to any of the three general lighthouse boards;

(3.) Sea-going ships being pleasure yachts;

shall be subject to the whole of the third part of the principal Act; except,—sections 136, 143, 145, 147, 149, 150, 151, 152, 153, 154, 155, 157, 158, 161, 162, 166, 170, 171, 231, 256, 279, 280, 281, 282, 283, 284, 285, 286, and 287.

Local Marine Boards.

Constitution of Local Marine Boards.

110. There shall be local marine boards for carrying into effect the provisions of this Act under the superintendence of the Board of Trade at those seaports of the United Kingdom at which local marine boards have heretofore been established, and at such other places as the Board of Trade appoints for this purpose; and each of such local marine boards shall be constituted as follows; (that is to say,) the mayor or provost and the stipendiary magistrate or such of the mayors or provosts and stipendiary magistrates of the place (if more than one) as the Board of Trade appoints shall be a member or members ex officio; the Board of Trade shall appoint four members from persons residing or having places of business at the port or within seven miles thereof; and the owners of foreign-going ships and of home trade passenger ships registered at the port shall elect six members; and such elections as aforesaid shall take place on the twenty-fifth day of January one thousand eight hundred and fifty-seven, and on the twenty-fifth day of January in every third succeeding year, and such appointments as aforesaid shall take place within one month after such elections; and upon the conclusion of such month and the constitution of a new board the functions of the then existing board shall cease, and the board consisting of the members then newly elected and appointed shall take its place;

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and any occasional vacancy caused in the intervals between the general elections and appointments, by death, resignation, disqualification, or otherwise, shall be filled up within one month after it occurs; and every person elected or appointed on an occasional vacancy shall continue a member until the next constitution of a new board; and the mayor or provost shall fix the place and mode of conducting all such elections as aforesaid, and also on occasional vacancies the day of election, and shall give at least ten days notice thereof; and the Board of Trade shall have power to decide any questions raised concerning any such elections.

Qualification of voters for members of Local Marine Boards.

111. Owners of foreign-going ships and of home trade passenger ships registered at any seaport at which there is a local marine board shall have votes at the election of members of such board as follows; (that is to say,) every registered owner of not less than two hundred and fifty tons, in the whole, of such shipping shall at every election have one vote for each member for every two hundred and fifty tons owned by him, so that his votes for any one member do not exceed ten: and for the purpose of ascertaining the qualification of such electors the following rules shall be observed; (that is to say) in the case of a ship registered in the name of one person, such person shall be deemed to be the owner, and in the case of a ship registered in distinct and several shares in the names of more persons than one, the tonnage shall be apportioned among the owners as nearly as may be in proportion to their respective shares, and each of such persons shall be deemed to be the owner of the tonnage so apportioned to him; and in the case of a ship or shares of a ship registered jointly without severance of interest in the names of more persons than one, the tonnage shall, if it is sufficient, either alone or together with other tonnage (if any) owned by such joint owners, to give a qualification to each of them, be apportioned equally between the joint owners, and each of such joint owners shall be deemed to be the owner of the equal share so apportioned to him, but if it is not so sufficient, the whole of such tonnage shall be deemed to be owned by such one of the joint owners resident or having a place of business at the port or within seven miles thereof as is first named on the register; and in making any such apportionment as aforesaid any portion may be struck off so as to obtain a divisible amount; and the whole

amount of tonnage so owned by each person, whether in ships or shares of or interest in ships, shall be added together, and, if sufficient, shall constitute his qualification.

Lists of such voters to be made.

112. The collector or comptroller of customs in every seaport of the United Kingdom at which there is a local marine board shall, with the assistance of the Registrar-General of Shipping and Seamen, on or before the twenty-fifth day of December in the year one thousand eight hundred and fifty-six, and in every third succeeding year, make out an alphabetical list of the persons entitled by virtue of this Act to vote at the election of members of such local marine board, containing the christian name, surname, and residence of each such person, and the number of votes to which he is entitled, and shall sign such list, and cause a sufficient number of copies thereof to be printed, and to be fixed on or near the doors of the custom house at such seaport for two entire weeks next after such list has been made, and shall keep true copies of such list, and permit the same to be perused by any person, without payment of any fee, at all reasonable hours during such two weeks.

Revision of list of voters.

113. The mayor or provost of every sea-port at which there is a local marine board, or such of them, if more than one, as is or are for the time being so appointed as aforesaid, shall at least twenty days before the twenty-fifth day of January in the year one thousand eight hundred and fifty-seven, and in each succeeding third year, nominate two justices of the peace to revise the said list; and such justices shall, between the eighth and fifteenth days of January both inclusive in the year in which they are so nominated, revise the said list at the custom house of the port, or in some convenient place near thereto, to be hired, if necessary, by the said collector or comptroller, and shall give three clear days' notice of such revision by advertising the same in some local newspaper, and by affixing a notice thereof on or near to the doors of such custom house, and shall make such revision by inserting in such list the name of every person who claims to be inserted therein, and gives proof satisfactory to the said revisors of his right to have his name so inserted, and by striking out therefrom the name of every person to the insertion of which an objection is made by any other person named in such list who gives proof satisfactory to the said revisors that the name of the person so objected to ought not to have been inserted

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therein; and the decision of the said revisors with respect to every such claim or objection shall be conclusive; and the said revisors shall immediately after such revision sign their names at the foot of the list so revised; and such list so revised shall be the register of voters at elections of members of the local marine board of such seaport for three years from the twenty-fifth day of January then next ensuing inclusive to the twenty-fourth day of January inclusive in the third succeeding year; and the said revised list, when so signed, shall be delivered to such mayor or provost as aforesaid of the place, who shall, if necessary, cause a sufficient number of copies thereof to be printed, and shall cause a copy to be delivered to every voter applying for the same.

Registers to be produced.

114. The said collector or comptroller, if required, shall for the assistance of the said revisors in revising the said list produce to them the books containing the register of ships registered at such seaport; and the Registrar-General of Shipping and Seamen, if required, shall also produce or transmit to such revisors such certified extracts or returns from the books in his custody as may be necessary for the same purpose.

Expenses to be paid by Board of Trade.

115. The two justices aforesaid shall certify all expenses properly incurred by any such collector or comptroller as aforesaid in making and printing the said list and in the revision thereof, and the Board of Trade shall pay the same, and also all expenses properly incurred by any such mayor or provost as aforesaid in printing the same or in elections taking place under this Act; and the said Board may disallow any items of any such expenses as aforesaid which it deems to have been improperly incurred.

Persons on revised list qualified to vote.

116. Every person whose name appears on such revised list, and no other person, shall be qualified to vote at the election of members of the local marine board at such seaport to be held on the twenty-fifth day of January next after the revision of such list, and at any occasional election held at any time between that day and the next ordinary triennial election of the members of such board.

Qualification of members of Local Marine Boards.

117. Every male person who is according to such revised list of the voters at any seaport entitled to a vote shall be qualified to be elected a member of the local marine board of such seaport, and no other person shall be so qualified; and if any

person elected as a member after such election ceases to be an owner of such quantity of tonnage as would entitle him to a vote, he shall no longer continue to act or be considered as a member, and thereupon another member shall be elected in his place.

Error in elections not to vitiate acts done.

118. No act of any local marine board shall be vitiated or prejudiced by reason of any irregularity in the election of any of its members, or of any error in the list of voters herein mentioned, or of any irregularity in the making or revising of such list, or by reason of any person who is not duly qualified as hereinbefore directed acting upon such board.

Minutes and business of Local Marine Boards.

119. Every local marine board shall keep minutes of its proceedings, and the same shall be kept in such mode (if any) as the Board of Trade prescribes; and such minutes, and all books or documents used or kept by any local marine board, or by any examiners, superintendents of mercantile marine offices, or other officers or servants under the control of any local marine board shall be open to the inspection of the Board of Trade and its officers; and every local marine board shall make and send to the Board of Trade such reports and returns as it requires; but, subject as aforesaid, every local marine board may regulate the mode in which its meetings are to be held and its business conducted.

Local Marine Board may determine number of quorum.

25 & 26 Vict. c. 63, s. 14.—Whereas doubts have been entertained whether local marine boards have the power of determining a quorum: it is hereby declared, that the power by the 119th section of the Principal Act given to every local marine board of regulating the mode in which its meetings are to be held and its business conducted, includes the power of determining a quorum; nevertheless, after the passing of this Act such quorum shall never consist of less than three members.

Witnesses for defence.

A local marine board, when inquiring into a charge of alleged misconduct against the master or mate of a vessel, has a discretionary power as to granting summonses for witnesses for the defence (*m*) (see s. 241). The board should inquire into who the witnesses are, and what they can prove, and refuse to summons any who can only speak to matters clearly irrelevant. Witnesses summoned for the defence are witnesses of the Court, and their expense is to be borne by the public (*m*).

Perjury.

Wilful and corrupt false swearing before a local marine board lawfully constituted,

(m) *R.* v. *Collingridge*, 34 L. J. Q. B. 9; S. C. *R.* v. *Local Marine Board of London*, 12 W. R. 1109.

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upon a matter material to an inquiry then being lawfully investigated before it in pursuance of this Act, is perjury, and indictable as such (*n*).

If any Local Marine Board fails to discharge its duties, Board of Trade may assume its duties, or direct a new election.

120. If any local marine board, by reason of any election not taking place, or of the simultaneous resignation or continued non-attendance of all or the greater part of the members, or from any other cause fails to meet or to discharge its duties, the Board of Trade may in its discretion either take into its own hands the performance of the duties of such local marine board until the next triennial appointment and election thereof, or direct that a new appointment and election of such local marine board shall take place immediately.

Board of Trade on complaint, may alter arrangements made by local marine boards.

121. If upon complaint made to the Board of Trade it appears to such Board that any appointments or arrangements made by any local marine board under the powers hereby given to it are not such as to meet the wants of the port, or are in any respect unsatisfactory or improper, the Board of Trade may annul, alter, or rectify such appointments or arrangements in such manner as having regard to the intentions of this Act and to the wants of the port, it deems to be expedient.

Mercantile Marine Offices (formerly called Shipping Offices).

Alteration of names.

25 & 26 Vict. c. 63, s. 15.—The offices termed Shipping Offices in the Principal Act shall be termed Mercantile Marine Offices, and the officers termed Shipping Masters and Deputy Shipping Masters in the Principal Act shall be termed Superintendents and Deputy Superintendents of such offices; but nothing in this section contained shall invalidate or affect any act which may be done at any such office under the title of a Shipping Office, or any act which may be done by, with, or to any of the said officers under the title of Shipping Master or Deputy Shipping Master.

The names are altered as above throughout these Acts, without any reference being made to this section of the "Merchant Shipping Act Amendment Act, 1862."

Local Marine Boards to establish mercantile marine offices.

122. In every seaport in the United Kingdom in which there is a local marine board such board shall establish a mercantile marine office or mercantile marine offices, and may for that purpose, subject as herein mentioned, procure the requisite premises, and appoint and from time to time remove and reappoint superintendents of such offices with any necessary de-

(*n*) *R.* v. *Tomlinson*, L. R. 2 C. C. 49; 36 L. J. M. C. 41.

puties, clerks, and servants, and regulate the mode of conducting business at such offices, and shall, subject as herein mentioned, have complete control over the same; and every act done by or before any deputy duly appointed shall have the same effect as if done by or before a superintendent.

Board of Trade to have partial control over mercantile marine offices.

123. The sanction of the Board of Trade shall be necessary so far as regards the number of persons so appointed by any such local marine board, and the amount of their salaries and wages and all other expenses; and the Board of Trade shall have the immediate control of such mercantile marine offices, so far as regards the receipt and payment of money thereat; and all superintendents of mercantile marine offices, deputies, clerks, and servants so appointed as aforesaid shall before entering upon their duties give such security (if any) for the due performance thereof as the Board of Trade requires; and if in any case the Board of Trade has reason to believe that any superintendent of a mercantile marine office, deputy, clerk, or servant appointed by any local marine board does not properly discharge his duties, the Board of Trade may cause the case to be investigated, and may, if it thinks fit so to do, remove him from his office, and may provide for the proper performance of his duties until another person is properly appointed in his place.

Business of such offices generally.

124. It shall be the general business of superintendents of mercantile marine offices appointed as aforesaid—

To afford facilities for engaging seamen by keeping registries of their names and characters;

To superintend and facilitate their engagement and discharge in manner hereinafter mentioned;

To provide means for securing the presence on board at the proper times of men who are so engaged;

To facilitate the making of apprenticeships to the sea service;

To perform such other duties relating to merchant seamen and merchant ships as are hereby or may hereafter under the powers herein contained be committed to them.

Fees to be paid upon engagements and discharges.

125. Such fees, not exceeding the sums specified in the table marked P. in the schedule hereto, as are from time to time fixed by the Board of Trade, shall be payable upon all engagements and discharges effected before superintendents of mercantile

§§ 125, 126.

marine offices as hereinafter mentioned, and the Board of Trade shall cause scales of the fees payable for the time being to be prepared and to be conspicuously placed in the mercantile marine offices; and all superintendents of such offices their deputies, clerks, and servants, may refuse to proceed with any engagement, or discharge, unless the fees payable thereon are first paid.

TABLE P.

FEES TO BE CHARGED FOR MATTERS TRANSACTED AT MERCANTILE MARINE OFFICES.

1. Engagement of Crews.

	£	s.	d.
In ships under 60 tons	0	4	0
60 to 100 „	0	7	0
100 to 200 „	0	15	0
200 to 300 „	1	0	0
300 to 400 „	1	5	0
400 to 500 „	1	10	0
500 to 600 „	1	15	0
600 to 700 „	2	0	0
700 to 800 „	2	5	0
800 to 900 „	2	10	0
900 to 1000 „	2	15	0
Above 1000 „	3	0	0

And so on for ships of larger tonnage, adding for every 100 tons above 1000, five shillings.

2. Engagement of seamen separately.
Two shillings for each.

3. Discharge of Crews.

	£	s.	d.
In ships under 60 tons	0	4	0
60 to 100 „	0	7	0
100 to 200 „	0	15	0
200 to 300 „	1	0	0
300 to 400 „	1	5	0
400 to 500 „	1	10	0
500 to 600 „	1	15	0
600 to 700 „	2	0	0
700 to 800 „	2	5	0
800 to 900 „	2	10	0
900 to 1000 „	2	15	0
Above 1000 „	3	0	0

And so on for ships of larger tonnage, adding for every 100 tons above 1000, five shillings.

4. Discharge of seamen separately.
Two shillings for each.

Masters to pay Fees, and to deduct part from wages.

126. Every owner or master of a ship engaging or discharging any seamen, or seaman in a mercantile marine office, or before a superintendent of a mercantile marine office, shall pay to the superintendent the whole of the fees hereby made payable in respect of such engagement or discharge, and may, for the purpose of in part reimbursing himself, deduct in respect of each such engagement or discharge from the wages of all persons (except apprentices) so engaged or discharged, and retain, any sums not exceeding the sums specified in that behalf in the table marked Q. in the schedule hereto: provided that, if in any cases the sums which the owner is so entitled to deduct exceed the amount of the fee payable by him, such excess shall be paid by him to the superintendent of the mercantile marine office in addition to such fee.

Proviso as to excess.

TABLE Q.

SUMS TO BE DEDUCTED FROM WAGES BY WAY OF PARTIAL REPAYMENT OF FEES IN TABLE P.

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1. In respect of engagements and discharges of crews, upon each engagement and each discharge.			2. In respect of engagements and discharges of seamen separately, upon each engagement and each discharge.
	s.	*d.*	
From wages of any mate, purser, engineer, surgeon, carpenter or steward . .	1	6	One shilling.
all others except apprentices	1	0	

Penalty on superintendents taking other remuneration.

127. Any superintendent of a mercantile marine office or any deputy superintendent, or any clerk or servant in any mercantile marine office who demands or receives any remuneration whatever, either directly or indirectly, for hiring or supplying any seaman for any merchant ship, except the lawful fees payable under this Act, shall for every such offence incur a penalty not exceeding 20*l.*, and shall also be liable to be dismissed from his office by the Board of Trade.

Business of mercantile marine offices may be transacted at Custom Houses.

128. The Board of Trade may, with the consent of the Commissioners of Customs, direct that at any place in which no separate mercantile marine office is established the whole or any part of the business of the mercantile marine office shall be conducted at the custom house, and thereupon the same shall be there conducted accordingly; and in respect of such business such custom house shall for all purposes be deemed to be a mercantile marine office, and the officer of customs there to whom such business is committed shall for all purposes be deemed to be a superintendent of the mercantile marine office within the meaning of this Act.

In London Sailors' Homes may be mercantile marine offices.

129. The Board of Trade may appoint any superintendent of or other person connected with any Sailors' Home in the port of London to be a superintendent of a mercantile marine office with any necessary deputies, clerks, and servants, and may appoint any office in any such Home to be a mercantile marine office; and all superintendents of mercantile marine offices so appointed shall be subject to the immediate control of the Board of Trade, and not of the local marine board of the port.

Dispensation with superin-

130. The Board of Trade may from time to time dispense

§ 130. with the transaction before the superintendent of a mercantile marine office, or in a mercantile marine office, of any matters required by this Act to be so transacted; and thereupon such matters shall, if otherwise duly transacted as required by law, be as valid as if transacted before a superintendent, or in a mercantile marine office.

tendence of superintendent of a mercantile marine office.

Power for Board of Trade to establish mercantile marine offices and to hold examinations at certain ports.

36 & 37 Vict. c. 85, s. 10.—In any case where the business of a mercantile marine office is conducted otherwise than under a local marine board, the Board of Trade may, if they think fit, instead of conducting such business at a custom-house or otherwise, establish a mercantile marine office, and for that purpose procure the requisite buildings and property, and from time to time appoint and remove all the requisite superintendents, deputies, clerks, and servants. They may also in the like case make all such provisions, and exercise all such powers with respect to the holding of examinations for the purpose of granting certificates of competency as masters, mates, or engineers, to persons desirous of obtaining the same as might have been made or exercised by a local marine board.

Punishment for embezzlement in mercantile marine offices.

25 & 26 Vict. c. 63, s. 16.—Any person appointed to any office or service by or under any local marine board shall be deemed to be a clerk or servant within the meaning of the sixty-eighth section of the Act of the twenty-fifth year of the reign of Her present Majesty, chapter ninety-six.

If any such person fraudulently applies or disposes of any chattel, money, or valuable security received by him whilst employed in such office or service, for or on account of any such local marine board, or for or on account of any other public board or department, to his own use, or any use or purpose other than that for which the same was paid, entrusted to, or received by him, or fraudulently withholds, retains, or keeps back the same or any part thereof, contrary to any lawful directions or instructions which he is required to obey in relation to such office or service, he shall be deemed guilty of embezzlement within the meaning of the said section;

Any such person shall, on conviction of such offence as aforesaid, be liable to the same pains and penalties as are thereby imposed upon any clerk or servant for embezzlement;

In any indictment against such person for such offence it shall be sufficient to charge any such chattel, money, or valuable security as the property either of the board by which he was appointed, or of the board or department for or on account of which he may have received the same; and no greater particularity in the description of the property shall be required in such indictment in order to sustain the same, or in proof of

the offence alleged, than is required in respect of an indictment, or the subject-matter thereof, by the seventy-first section of the last-mentioned Act.

Embezzlement by clerks or servants generally.

By 24 & 25 Vict. c. 96, s. 68 (referred to in the preceding section), whosoever being a clerk or servant, or being employed for the purpose or in the capacity of a clerk or servant, shall fraudulently embezzle any chattel, money, or valuable security, which shall be delivered to or received, or taken into possession by him, for or in the name or on the account of his master or employer, or any part thereof, shall be deemed to have feloniously stolen the same from his master or employer, although such chattel, money, or security was not received into the possession of such master or employer otherwise than by the actual possession of his clerk, servant, or other person so employed; and being convicted thereof, shall be liable, at the discretion of the Court, to be kept in penal servitude for any term not exceeding fourteen years, and not less than five years, or to be imprisoned for any term not exceeding two years with or without hard labour, and with or without solitary confinement, and if a male under the age of sixteen years, with or without whipping.

Examinations and Certificates of Masters, Mates, and Engineers (a).

Examinations to be instituted for masters and mates.

131. Examinations shall be instituted for persons who intend to become masters or mates of foreign-going ships, or of home trade passenger ships, or who wish to procure certificates of competency hereinafter mentioned; and subject, as herein mentioned, the local marine boards shall provide for the examinations at their respective ports, and may appoint and from time to time remove and re-appoint examiners to conduct the same, and may regulate the same; and any members of the local marine board of the place where the examination is held may be present and assist at any such examination.

Examinations of masters and mates at ports where there are no local marine boards.

25 & 26 Vict. c. 63, s. 17.—Whereas it is expedient to make provision in certain cases for holding examinations of applicants for certificates of competency at places where there are no local marine boards: Be it enacted that the Board of Trade may, if satisfied that serious inconvenience exists at any port in consequence of the distance which applicants for certificates have to travel in order to be examined, may, with the concurrence of any local marine board, send the examiner or examiners of that local marine board to the port where such inconvenience exists; and thereupon the said examiner or examiners shall proceed to such port, and shall there examine the applicants in the presence of such person or persons (if

(a) Instructions were issued by the Board of Trade in May, 1866, relative to the examinations of masters and mates. These will be found in Kay on Shipmasters, &c., vol. ii. App. No. 3.

§ 131. any) as the Board of Trade may appoint for the purpose; and such examinations shall be conducted in the same manner, and shall have the same effect as other examinations under the said Act.

Steam ships to carry certificated engineers.

25 & 26 Vict. c. 63, s. 5.—On and after the first day of June, one thousand eight hundred and sixty-three, every steam ship which is required by the Principal Act to have a master possessing a certificate from the Board of Trade (*see sect.* 136, *p.* 121), shall also have an engineer or engineers possessing a certificate or certificates from the Board of Trade as follows; that is to say,

Two grades of certificates.

(1.) Engineers' certificates shall be of two grades, viz., "First-class Engineers' Certificates," and "Second-class Engineers' Certificates":

Steamers of 100 horse power and upwards.

(2.) Every foreign-going steam ship of one hundred nominal horse power or upwards shall have as its first and second engineers two certificated engineers, the first possessing a "First-class Engineer's Certificate," and the second possessing a "Second-class Engineer's Certificate" or a certificate of the higher grade:

Of less than 100 horse power.

(3.) Every foreign-going steam ship of less than one hundred nominal horse power shall have as its only or first engineer an engineer possessing a "Second-class Engineer's Certificate" or a certificate of the higher grade:

Home trade passenger ships.

(4.) Every sea-going home trade passenger steam ship shall have as its only or first engineer an engineer possessing a "Second-class Engineer's Certificate" or a certificate of the higher grade:

Penalty for non-compliance.

(5.) Every person who, having been engaged to serve in any of the above capacities in any such steam ship as aforesaid, goes to sea in that capacity without being at the time entitled to and possessed of such certificate as is required by this section, and every person who employs any person in any of the above capacities in such ship without ascertaining that he is at the time entitled to and possessed of such certificate as is required by this section, shall for each such offence incur a penalty not exceeding fifty pounds.

Examinations for engineers' certificates of competency.

25 & 26 Vict. c. 63, s. 6.—The Board of Trade shall from time to time cause examinations to be held of persons who may be desirous of obtaining certificates of competency as engineers: for the purpose of such examinations the Board of Trade shall from time to time appoint and remove examiners, and award the remuneration to be paid to them; lay down rules as to the qualification of applicants, and as to the times and places of examination; and generally do all such acts as it thinks expedient in order to carry into effect the examination of such engineers as aforesaid.

Powers of Board of Trade over examinations.

132. The Board of Trade may from time to time lay down rules as to the conduct of such examinations and as to the qualifications of the applicants, and such rules shall be strictly adhered to by all examiners; and no examiner shall be appointed unless he possesses a certificate of qualification, to be from time to time granted or renewed by the Board of Trade; and the sanction of the Board of Trade shall be necessary, so far as regards the number of examiners to be appointed, and the amount of their remuneration; and the Board of Trade may at any time depute any of its officers to be present and assist at any examination; and if it appears to the Board of Trade that the examinations for any two or more ports can be conducted without inconvenience by the same examiners, it may require and authorise the local marine boards of such ports to act together as one board in providing for and regulating examinations and appointing and removing examiners for such ports.

Fees to be paid by applicants for examinations.

133. All applicants for examination shall pay such fees, not exceeding the sums specified in the table marked R. in the schedule hereto, as the Board of Trade directs; and such fees shall be paid to such persons as the said board appoints for that purpose.

TABLE R.

FEES TO BE CHARGED ON EXAMINATIONS.

	£	s.	d.
For a certificate as master	2	0	0
For a certificate as mate	1	0	0

25 & 26 Vict. c. 63, s. 7.—All applicants for examination shall pay such fees not exceeding the sums specified in the table marked B. in the schedule hereto, as the Board of Trade directs; and such fees shall be paid to such persons as the said Board appoints for that purpose, and shall be carried to the account of the Mercantile Marine Fund.

TABLE B.

FEES TO BE CHARGED ON EXAMINATION OF ENGINEERS.

	£	s.	d.
For a first-class engineer's certificate	2	0	0
For a second-class engineer's certificate	1	0	0

Certificates of competency to

134. Subject to the proviso hereinafter contained, the Board of Trade shall deliver to every applicant who is duly reported

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be granted to those who pass.

by the local examiners to have passed the examination satisfactorily, and to have given satisfactory evidence of his sobriety, experience, ability, and general good conduct on board ship, a certificate (hereinafter called a "Certificate of Competency") to the effect that he is competent to act as master, or as first, second, or only mate of a foreign-going ship, or as master or mate of a home trade passenger ship, as the case may be: provided that in every case in which the Board of Trade has reason to believe such report to have been unduly made, such board may remit the case either to the same or to any other examiners, and may require a re-examination of the applicant, or a further inquiry into his testimonials and character before granting him a certificate.

25 & 26 Vict. c. 63, s. 8.—The Board of Trade shall deliver to every applicant who is duly reported to have passed the (*engineer's*) examination satisfactorily, and to have given satisfactory evidence of his sobriety, experience, and ability, a certificate of competency as first class engineer, or as second class engineer, as the case may be.

Certificates of service to be delivered to persons who served as masters or mates before 1851, and to certain naval officers; and certificates of service for home trade passenger ships to be delivered to persons who have served as masters or mates in such ships before 1st Jan. 1854.

135. Certificates of service, differing in form from certificates of competency, shall be granted as follows; (that is to say,)

(1.) Every person who before the first day of January one thousand eight hundred and fifty-one served as master in the British merchant service, or who has attained or attains the rank of lieutenant, master, passed mate, or second master, or any higher rank in the service of Her Majesty or of the East India Company, shall be entitled to a certificate of service as master for foreign-going ships:

(2.) Every person who before the first day of January one thousand eight hundred and fifty-one served as mate in the British merchant service shall be entitled to a certificate of service as mate for foreign-going ships:

(3.) Every person who before the first day of January one thousand eight hundred and fifty-four has served as master of a home trade passenger ship shall be entitled to a certificate of service as master for home trade passenger ships:

(4.) Every person who before the first day of January one

thousand eight hundred and fifty-four has served as mate of a home trade passenger ship shall be entitled to a certificate of service as mate for home trade passenger ships:

Particulars in certificate.

And each of such certificates of service shall contain particulars of the name, place, and time of birth, and of the length and nature of the previous service of the person to whom the same is delivered; and the Board of Trade shall deliver such certificates of service to the various persons so respectively entitled thereto, upon their proving themselves to have attained such rank or to have served as aforesaid, and upon their giving a full and satisfactory account of the particulars aforesaid.

Engineers' certificates of service to be delivered on proof of certain service.

25 & 26 Vict. c. 63, s. 9.—Certificates of service for engineers, differing in form from certificates of competency, shall be granted as follows; that is to say,

(1.) Every person who before the first day of April one thousand eight hundred and sixty-two has served as first engineer in any foreign-going steam ship of one hundred nominal horse power or upwards, or who has attained or attains the rank of engineer in the service of Her Majesty or of the East India Company, shall be entitled to a "First-class Engineer's Certificate" of service:

(2.) Every person who before the first day of April one thousand eight hundred and sixty-two has served as second engineer in any foreign-going steam ship of one hundred nominal horse power or upwards, or as first or only engineer in any other steam ship, or who has attained or attains the rank of first-class assistant engineer in the service of Her Majesty, shall be entitled to a "Second-class Engineer's Certificate" of service:

Particulars in certificate.

Each of such certificates of service shall contain particulars of the name, place, and time of birth, and the length and nature of the previous service of the person to whom the same is delivered; and the Board of Trade shall deliver such certificates of service to the various persons so respectively entitled thereto, upon their proving themselves to have attained such rank or to have served as aforesaid, and upon their giving a full and satisfactory account of the particulars aforesaid.

No foreign-going ship or home trade passenger ship to proceed to sea without certificates of

136. No foreign-going ship or home trade passenger ship shall go to sea from any port in the United Kingdom unless the master thereof, and in the case of a foreign-going ship the first and second mates or only mate (as the case may be), and in the case of a home-trade passenger ship the first or only

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mate (as the case may be), have obtained and possess valid certificates either of competency or service appropriate to their several stations in such ship, or of a higher grade; and no such ship, if of one hundred tons burden or upwards, shall go to sea as aforesaid, unless at least one officer besides the master has obtained and possesses a valid certificate appropriate to the grade of only mate therein or to a higher grade; and every person who, having been engaged to serve as master or as first, or second, or only mate of any foreign-going ship, or as master or first or only mate of a home trade passenger ship, goes to sea as aforesaid as such master or mate without being at the time entitled to and possessed of such a certificate as hereinbefore required, or who employs any person as master, or first, second, or only mate of any foreign-going ship, or as master or first or only mate of a home trade passenger ship, without ascertaining that he is at the time entitled to and possessed of such certificate, shall for each such offence incur a penalty not exceeding 50*l*. (*See sect.* 131, *p.* 117, *and sect.* 109, *p.* 105.)

the master and mates.

Penalty.

Certificates for foreign-going ships available for home trade passenger ships.

137. Every certificate of competency for a foreign-going ship shall be deemed to be of a higher grade than the corresponding certificate for a home trade passenger ship, and shall entitle the lawful holder thereof to go to sea in the corresponding grade in such last-mentioned ship; but no certificate for a home trade passenger ship shall entitle the holder to go to sea as master or mate of a foreign-going ship.

The Registrar to record grants, cancellations, &c. of certificates.

138. All certificates, whether of competency or service, shall be made in duplicate, and one part shall be delivered to the person entitled to the certificate, and the other shall be kept and recorded by the Registrar-General of Shipping and Seamen or by such other person as the Board of Trade appoints for that purpose; and the Board of Trade shall give to such registrar or such other person immediate notice of all orders made by it for cancelling, suspending, altering, or otherwise affecting any certificate in pursuance of the powers herein contained; and the registrar or such other person as aforesaid shall thereupon make a corresponding entry in the record of certificates; and a copy purporting to be certified by such registrar or his assistant or by such person as aforesaid of any certificate shall be *primâ facie* evidence of such certificate, and a copy purporting to be so certified as aforesaid of any entry made as aforesaid in respect of any certificate shall be *primâ*

Duplicates and entries to be evidence.

facie evidence of the truth of the matters stated in such entry. § 139.

139. Whenever any master, mate, or engineer proves to the satisfaction of the Board of Trade that he has, without fault on his part, lost or been deprived of any certificate already granted to him, the Board of Trade shall, upon payment of such fee (if any), as it directs, cause a copy of the certificate to which by the record so kept as aforesaid he appears to be entitled, to be made out and certified as aforesaid, and to be delivered to him; and any copy which purports to be so made and certified as aforesaid shall have all the effect of the original. In case of loss a copy to be granted.

25 & 26 Vict. c. 63, s. 10.—The provisions of the Principal Act, with respect to the certificates of competency or service of masters and mates, contained in the 138th, 139th, 140th, 161st, and 162nd sections of the said Act, shall apply to certificates of competency or service granted under this Act in the same manner as if certificates of competency and service to be granted to engineers under this Act were specially mentioned and included in the said sections. Certain provisions of Merchant Shipping Act to apply to engineers' certificates.

32 & 33 Vict. c. 11, s. 8.—Where the legislature of any British possession provides for the examination of and grant of certificates of competency to persons intending to act as masters, mates, or engineers on board British ships, and the Board of Trade reports to Her Majesty that they are satisfied that the examinations are so conducted as to be equally efficient as the examinations for the same purpose in the United Kingdom under the Acts relating to Merchant Shipping, and that the certificates are granted on such principles as to show the like qualifications and competency as those granted under the said Acts, and are liable to be forfeited for the like reasons and in like manner, it shall be lawful for Her Majesty by Order in Council— Colonial certificate to master, mates, and engineers. Orders in Council may declare as follows.

(1.) To declare that the said certificates shall be of the same force as if they had been granted under the said Acts:

(2.) To declare that all or any of the provisions of the said Acts which relate to certificates of competency granted under those Acts shall apply to the certificates referred to in the said order:

(3.) To impose such conditions and to make such regulations with respect to the said certificates, and to the use, issue, delivery, cancellation, and suspension thereof as to Her Majesty may seem fit, and to impose penalties not exceeding 50*l.* for the breach of such conditions and regulations:

Upon the publication in the *London Gazette* of any such Publication in Gazette.

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Order in Council as last aforesaid, the provisions therein contained shall, from a date to be mentioned for the purpose in such Order, take effect as if they had been contained in this Act:

It shall be lawful for Her Majesty in Council to revoke any Order made under this section.

Penalties for false representations:

for forging or altering, or fraudulently using or lending any certificate.

140. Every person who makes, or procures to be made, or assists in making, any false representation for the purpose of obtaining for himself or for any other person a certificate either of competency or service, or who forges, assists in forging, or procures to be forged, or fraudulently alters, assists in fraudulently altering, or procures to be fraudulently altered, any such certificate or any official copy of any such certificate, or who fraudulently makes use of any such certificate or any copy of any such certificate which is forged, altered, cancelled, suspended, or to which he is not justly entitled, or who fraudulently lends his certificate to or allows the same to be used by any other person, shall for each offence be deemed guilty of a misdemeanor.

Apprenticeships to the Sea Service.

Superintendents to assist in binding apprentices, and may receive fees.

141. All superintendents of mercantile marine offices appointed under this Act shall, if applied to for the purpose, give to any board of guardians, overseers, or other persons desirous of apprenticing boys to the sea service, and to masters and owners of ships requiring apprentices, such assistance as is in their power for facilitating the making of such apprenticeships, and may receive from persons availing themselves of such assistance such fees as may be determined in that behalf by the Board of Trade, with the concurrence, so far as relates to pauper apprentices in England, of the Poor Law Board in England, and so far as relates to pauper apprentices in Ireland, of the Poor Law Commissioners in Ireland.

Indentures of boys bound apprentices to sea service by guardians or overseers to be witnessed by two justices.

142. In the case of every boy bound apprentice to the sea service by any guardians or overseers of the poor, or other persons having the authority of guardians of the poor, the indentures shall be executed by the boy and the person to whom he is bound in the presence of and shall be attested by two justices of the peace, who shall ascertain that the boy has consented to be bound, and has attained the age of twelve years, and is of sufficient health and strength, and that the

master to whom the boy is to be bound is a proper person for the purpose.

The two justices must be present together and acting within their jurisdiction, as this is a judicial act (*a*).

Indentures of apprenticeship to be exempt from stamp duty, and to be recorded.

143. All indentures of apprenticeship to the sea service shall be exempt from stamp duty; and all such indentures shall be in duplicate; and every person to whom any boy whatever is bound as an apprentice to the sea service in the United Kingdom shall within seven days after the execution of the indenture take or transmit the same to the Registrar-General of Shipping and Seamen, or to some superintendent of a mercantile marine office; and the said registrar or superintendent shall retain and record one copy, and shall indorse on the other that the same has been recorded, and shall re-deliver the same to the master of the apprentice; and whenever any such indenture is assigned or cancelled, and whenever such apprentice dies or deserts, the master of the apprentice shall, within seven days after such assignment, cancellation, death, or desertion, if the same happens within the United Kingdom, or if the same happens elsewhere, so soon afterwards as circumstances permit, notify the same either to the said Registrar of Seamen, or to some shipping master, to be recorded; and every person who fails to comply with the provisions of this section shall incur a penalty not exceeding 10*l.*

For exemptions, see 25 & 26 Vict. c. 63, s. 13, under s. 109, p. 106.

Rules to govern apprenticeship of paupers in Great Britain and Ireland respectively.

144. Subject to the provisions hereinbefore contained, all apprenticeships to the sea service made by any guardians or overseers of the poor, or persons having the authority of guardians of the poor, shall, if made in Great Britain, be made in the same manner and be subject to the same laws and regulations as other apprenticeships made by the same persons, and if made in Ireland shall be subject to the following rules; (that is to say,)

Boys in unions, or whose parents are receiving relief.

(1.) In every union the guardians of the poor, or other persons duly appointed to carry into execution the Acts for the relief of the destitute poor and having the authority of guardians of the poor, may put out and

(*a*) Maclachlan on Shipping (2nd ed.), 201; *R.* v. *Totness*, 11 Q. B. 80; *R.* v. *Hamstall*, 3 T. R. 380.

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bind as an apprentice to the sea service any boy who or whose parent or parents is or are receiving relief in such union, and who has attained the age of twelve years, and is of sufficient health and strength, and who consents to be so bound:

Consent in writing of guardians.

(2.) If the cost of relieving any such boy is chargeable to an electoral division of a union, then (except in cases in which paid officers act in place of guardians) he shall not be bound as aforesaid unless the consent in writing of the guardians of such electoral division or of a majority of the guardians (if more than one) be first obtained, such consent to be, when possible, indorsed upon the indentures:

Expense of outfit.

(3.) The expense incurred in the binding and outfit of any such apprentice shall be charged to the union or electoral division (as the case may be) to which the boy or his parent or parents is or are chargeable at the time of his being apprenticed:

Indentures may be sued on by guardians.

(4.) All indentures made in any union may be sued upon by the guardians of the union or persons having the authority of guardians therein for the time being, by their name of office, and actions brought by them upon such indentures shall not abate by reason of death or change in the persons holding the office; but no such action shall be commenced without the consent of the Irish Poor Law Commissioners:

Costs.

(5.) The amount of the costs incurred in any such action and not recovered from the defendant therein, may be charged upon the union or electoral division (as the case may be) to which the boy or his parent or parents was or were chargeable at the time of his being apprenticed.

Apprentices and their indentures to be brought before superintendent before each voyage in a foreign-going ship.

145. The master of every foreign-going ship shall, before carrying any apprentice to sea from any place in the United Kingdom, cause such apprentice to appear before the superintendent of the mercantile marine office before whom the crew is engaged, and shall produce to him the indenture by which such apprentice is bound, and the assignment or assignments thereof (if any); and the name of such apprentice, with the date of the indenture and of the assignment or assignments thereof (if any), and the name of the port or ports at which the

same have been registered, shall be entered on the agreement; and for any default in obeying the provisions of this section the master shall for each offence incur a penalty not exceeding 5*l.*

An apprentice may sue the proceeds of the ship he has served in, for wages due under a general apprenticeship to the owner, but he cannot proceed in the Admiralty Court for the penalty contained in the indenture (*b*). He has the same modes of recovering wages as a seaman (see s. 188, p. 171 *et seq.*).

Engagement of Seamen.

This part of the Act applies to all seagoing British ships wherever registered, and to their owners, masters, and crews (see s. 109, p. 106).

Board of Trade may license persons to procure seamen.

146. The Board of Trade may grant to such persons as it thinks fit, licenses to engage or supply seamen or apprentices for merchant ships in the United Kingdom, to continue for such periods, to be upon such terms, and to be revocable upon such conditions, as such Board thinks proper.

Penalties;

147. The following offences shall be punishable as hereinafter mentioned; (that is to say,)

for supplying seamen without license;

(1.) If any person not licensed as aforesaid, other than the owner or master or a mate of the ship, or some person who is *bonâ fide* the servant and in the constant employ of the owner, or a superintendent of a mercantile marine office duly appointed as aforesaid, engages or supplies any seaman or apprentice to be entered on board any ship in the United Kingdom, he shall for each seaman or apprentice so engaged or supplied incur a penalty not exceeding 20*l.*

for employing unlicensed persons;

(2.) If any person employs any unlicensed person, other than persons so excepted as aforesaid, for the purpose of engaging or supplying any seaman or apprentice to be entered on board any ship in the United Kingdom, he shall for each seaman or apprentice so engaged or supplied incur a penalty not exceeding 20*l.*, and if licensed, shall in addition forfeit his license:

for receiving seamen illegally supplied.

(3.) If any person knowingly receives or accepts to be entered on board any ship any seaman or apprentice who has been engaged or supplied contrary to the

(*b*) *The Albert Crosby*, Lush. 44.

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provisions of this Act, he shall for every seaman or apprentice so engaged or supplied incur a penalty not exceeding 20*l.*

Penalty for receiving remuneration from seamen for shipping them.

148. If any person demands or receives, either directly or indirectly, from any seaman or apprentice, or from any person seeking employment as a seaman or apprentice, or from any person on his behalf, any remuneration whatever, other than the fees hereby authorised, for providing him with employment, he shall for every such offence incur a penalty not exceeding 5*l.*

Agreements to be made with seamen, containing certain particulars.

149. The master of every ship, except ships of less than eighty tons registered tonnage exclusively employed in trading between different ports on the coasts of the United Kingdom, shall enter into an agreement with every seaman whom he carries to sea from any port in the United Kingdom as one of his crew in the manner hereinafter mentioned; and every such agreement shall be in a form sanctioned by the Board of Trade, and shall be dated at the time of the first signature thereof, and shall be signed by the master before any seaman signs the same, and shall contain the following particulars as terms thereof; (that is to say,)

Nature of voyage.

(1.) The nature, and, as far as practicable, the duration of the intended voyage or engagement:

Mode of interpretation.

In interpreting the Act, the words "nature of the voyage" must have such a rational construction as to answer the main and leading purpose for which they were framed, namely, to give the mariner a fair intimation of the nature of the service in which he was about to engage himself, when he signed the ship's articles (*c*).

Agreements for maximum period.

36 & 37 Vict. c. 85, s. 7.—Any agreement with a seaman made under section 149 of the Merchant Shipping Act, 1854, may, instead of stating the nature and duration of the intended voyage or engagement as by that section required, state the maximum period of the voyage or engagement, and the places or parts of the world (if any) to which the voyage or engagement is not to extend.

Crew.

(2.) The number and description of the crew, specifying how many are engaged as sailors:

Time.

(3.) The time at which each seaman is to be on board or to begin work:

(*c*) *The Westmoreland*, 1 W. Rob. 221.

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(4.) The capacity in which each seaman is to serve: Capacity.

(5.) The amount of wages which each seaman is to receive: Wages.

(6.) A scale of the provisions which are to be furnished to each seaman: Provisions.

(7.) Any regulations as to conduct on board, and as to fines, short allowance of provisions, or other lawful punishments for misconduct, which have been sanctioned by the Board of Trade as regulations proper to be adopted, and which the parties agree to adopt: Regulations on board.

And every such agreement shall be so framed as to admit of stipulations, to be adopted at the will of the master and seaman in each case, as to advance and allotment of wages, and may contain any other stipulations which are not contrary to law: Provided that if the master of any ship belonging to any British possession has an agreement with his crew made in due form according to the law of the possession to which such ship belongs or in which her crew were engaged, and engages single seamen in the United Kingdom, such seamen may sign the agreement so made, and it shall not be necessary for them to sign an agreement in the form sanctioned by the Board of Trade. Proviso as to forms for colonial ships.

Implied Obligation of Owner.

39 & 40 Vict. c. 80, s. 5.—In every contract of service, express or implied, between the owner of a ship and the master or any seaman thereof, and in every instrument of apprenticeship whereby any person is bound to serve as an apprentice on board any ship, there shall be implied, notwithstanding any agreement to the contrary, an obligation on the owner of the ship, that the owner of the ship, and the master, and every agent charged with the loading of the ship, or the preparing thereof for sea, or the sending thereof to sea, shall use all reasonable means to insure the seaworthiness of the ship for the voyage at the time when the voyage commences, and to keep her in a seaworthy condition for the voyage during the same: Provided, that nothing in this section shall subject the owner of a ship to any liability by reason of the ship being sent to sea in an unseaworthy state where, owing to special circumstances, the so sending thereof to sea is reasonable and justifiable. Obligation of shipowner to crew with respect to use of reasonable efforts to secure seaworthiness.

This implied obligation is a new one created by the "Merchant Shipping Act, 1876."

A sailor when he agrees to serve on board a ship becomes a servant of General rule

§ 149. the owner (*a*). The general rule of law is, that a servant, when he engages to serve a master, undertakes, as between himself and his master, to run all the ordinary risks of the service; while it is the master's duty to take care that the servant shall not be exposed to unreasonable risk (*b*).

as to master and servant.

Seaworthiness.

Before this enactment there was no implied warranty of seaworthiness on the part of the owner. An action was brought by a seaman to recover damages for injuries sustained in consequence of the vessel leaving port in an unseaworthy condition; but as there was no allegation that the owners knew she was unseaworthy, the seaman was held not entitled to recover any damages (*c*). How far this section will give the seaman a right of action for injuries to himself arising from unseaworthiness, remains to be seen. If it is proved that the owner, or any of his agents, have not used all reasonable means for ensuring seaworthiness, no doubt the seaman will then have a right of action; but it can hardly be said that the section implies an absolute warranty of seaworthiness in every case.

American law.

The American cases differ from the English in this respect, and it has there been held, that both law and reason imply that at the commencement of the voyage the ship should be seaworthy (*d*).

Deck and load lines.

Before an agreement is signed with the crew, the master must enter in it a statement of the distance between the centre of the load-line disc and the upper edge of each of the lines indicating the position of the decks which is above that centre. This is a new proviso enacted in the "Merchant Shipping Act, 1876" (see 39 & 40 Vict. c. 80, s. 26, sub s. (5), under s. 34, p. 30).

As to allotment of wages, see ss. 168, 169, p. 168.

Agreements with fishermen.

36 & 37 Vict. c. 85, s. 8.—The owner or master of any British vessel engaged in fishing off the coast of the United Kingdom may enter into an agreement with any person employed on such vessel that such person shall be remunerated wholly by a share in the profit of the fishing adventure.

Every such agreement shall be in writing or in print, or partly in writing and partly in print, and shall be signed by the contracting parties in the presence of a superintendent or deputy superintendent of a mercantile marine office.

The superintendent or deputy superintendent shall, before such agreement is signed, read and (if necessary) explain the same to the contracting parties, and shall attest the signature of the agreement, and certify that it has been read to and agreed to by the contracting parties.

Any such agreement, if made in the manner by this section required, shall be valid and binding on all the contracting

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(*a*) *Couch* v. *Steel*, 3 E. & B. 408.

(*b*) *Hutchinson* v. *The York, Newcastle, &c., Railway Co.*, 5 Ex. 343; 19 L. J. Ex. 296; *Farwell* v. *Boston, &c., Railway Corporation*, 45 Mass. (Amer. Rep.), 49; *Waller* v. *South-Eastern Railway Co.*, 32 L. J. Ex. 205; 2 H. & C. 102.

(*c*) *Couch* v. *Steel*, 3 E. & B. 402.

(*d*) *Dixon* v. *The Ship Cyrus*, 2 Pet. Ad. (Amer. Rep.), 411; *The Moslem*, Olcott (Amer. Rep.), 289.

parties, notwithstanding anything contained in section 182 of the Merchant Shipping Act, 1854. § 149.

Fishing vessels, ships belonging to the three general lighthouse boards, and pleasure yachts, are exempt from the operation of this section (see 25 & 26 Vict. c. 63, s. 13, under sect. 109, p. 107). Agreements to serve in ships employed on the southern whale fishery, are generally made on the basis that the seamen shall be wholly compensated by shares in the profit of the adventure (s. 187, p. 170) Exempted vessels.

*** *Any erasure, interlineation, or alteration in this agreement will be void unless attested by some superintendent of a mercantile marine office, officer of customs, consul, or vice-consul, to be made with the consent of the persons interested.*

Eng. 1, late A., AC., and M. Sanctioned by the Board of Trade, July 1869. In pursuance of 17 & 18 Vict. c. 104.

AGREEMENT No. .

AGREEMENT AND ACCOUNT OF CREW.

(FOREIGN-GOING SHIP.)

EXECUTED IN EIGHT PAGES.

The term "Foreign-going ship" means every ship employed in trading or going between some place or places in the United Kingdom and some place or places situate beyond the following limits, that is to say, the coasts of the United Kingdom, the Islands of Guernsey, Jersey, Sark, Alderney, and Man, and the Continent of Europe between the river Elbe and Brest inclusive.

		s.	d.
Engagement Fee.			
Discharging Fee.			

Name of Ship.	Official No.	Port of Registry.	Port No. and Date of Register.	Registered Tonnage.		Nominal Horse-power of Engines (if any).
				Gross.	Net.	

Registered Managing Owner, or person appointed under the 39 & 40 Vict. c. 80.		No. of Seamen for whom accommodation is certified. (30 & 31 Vict. c. 124.)	Distance in feet and inches between centre of maximum load line disc and upper edge of line indicating the position of the	
Name.	Address. (State No. of House, Street, and Town.)		First deck above it.	Second deck above it.
			ft. in.	ft. in.

Scale of Provisions

To be allowed and served out to the crew during the voyage, in addition to the daily issue of lime and lemon juice and sugar, or other antiscorbutics in any case required by law.

	Bread lb.	Beef lb.	Pork lb.	Flour lb.	Peas pint	Rice lb.	Tea oz.	Coffee oz.	Sugar oz.	Water qts.
Sunday . .										
Monday. . .										
Tuesday . .										
Wednesday .										
Thursday. .										
Friday . . .										
Saturday . .										

Substitutes.

The several Persons whose names are hereto subscribed, and whose descriptions are contained on the other side or sides, and of whom are engaged as sailors, hereby agree to serve on board the said ship, in the several capacities expressed against their respective names on a voyage from*

And the crew agree to conduct themselves in an orderly, faithful, honest, and sober manner, and to be at all times diligent in their respective duties, and to be obedient to

* Here the voyage is to be described, and the places named at which the ship is to touch, or, if that cannot be done, the general nature and probable length of the voyage is to be stated.

the lawful commands of the said master, or of any person who shall lawfully succeed him, and of their superior officers, in every thing relating to the said ship and the stores and cargo thereof, whether on board, in boats, or on shore: in consideration of which services to be duly performed, the said master hereby agrees to pay to the said crew as wages the sums against their names respectively expressed, and to supply them with provisions according to the above scale: And it is hereby agreed, that any embezzlement or wilful or negligent destruction of any part of the ship's cargo or stores shall be made good to the owner out of the wages of the person guilty of the same: And if any person enters himself as qualified for a duty which he proves incompetent to perform, his wages shall be reduced in proportion to his incompetency: And it is also agreed, that the regulations authorised by the Board of Trade, which are printed herein and numbered † are adopted by the parties hereto, and shall be considered as embodied in this agreement: And it is also agreed, that if any member of the crew considers himself to be aggrieved by any breach of the agreement or otherwise, he shall represent the same to the master or officer in charge of the ship in a quiet and orderly manner, who shall thereupon take such steps as the case may require: And it is also agreed, that ‡

The authority of the owner or agent for all allotments mentioned within is in my possession.

_____ { *Superintendent, Officer of Customs, or Consular Officer.*

This is to be signed if such an authority is to be produced, and to be scored across in ink if it has not.

IN WITNESS whereof the said parties have subscribed their names on the other side or sides hereof on the days against their respective signatures mentioned.

Signed by Master, on the day of 18.

Date of Commencement of Voyage.	Port at which Voyage commenced.	These columns to be filled up at the end of the voyage. Date of Termination of Voyage.	Port at which Voyage terminated.	Date of Delivery of Lists to Superintendent.	
					I hereby declare to the truth of the entries in this agreement and account of crew, &c. _____ Master.

† Here are to be inserted the numbers of any of the regulations for preserving discipline issued by the Board of Trade and printed on the last page hereof which the parties agree to adopt.

‡ Here any other stipulations may be inserted to which the parties agree, and which are not contrary to law.

Reference No.	Particulars of Engagement.										
	Signatures of Crew.	Age.	Town or Country where born.	If in the Reserve, No. of Commission or R. V. 2.	Ship in which he last served.		Date and Place of joining the Ship.		In what Capacity engaged, and if Master, Mate, or Engineer, No. of his Certificate.	Time at which he is to be on Board.
					State Name, and Official No. or Port she belonged to.	Year.	Date.	Place.		
	1	2	3	4	5	6	7	8	9	10
1	Master to sign first.									
2										
3										
4										

* If any member of the crew enters her Majesty's service, the name of the Queen's ship into which and the other causes of leaving the ship should be briefly

Amount of Wages per Week, Calendar Month, Share, or Voyage.	Amount of Wages advanced on Entry.	Amount of Weekly or Monthly Allotment.	Signature or Initials of Superintendent, Consul, or Officer of Customs.	Particulars of Discharge, &c. *To be filled in by the Master upon the Discharge, Death, or Desertion of any Member of his Crew.* Date, Place, and Cause of leaving the Ship, or of Death.			Balance of Wages paid on Discharge.	Release (late M.)		Reference No.
				Date.	Place.	Cause.		We, the undersigned members of the crew of this ship, do hereby release this ship, and the master and owner or owners thereof, from all claims for wages or otherwise in respect of this voyage.	Signatures of crew (each to be on the line on which he signed in Col. 1.)	
11	12	13	14	15	16	17	18	19		20
										1
										2
										3
										4

he enters is to be stated under the head of "*Cause of leaving the Ship*," thus "H.M.S. Revenge;" stated thus, "discharged," "deserted," "left sick," "died."

ACCOUNT OF APPRENTICES ON BOARD (IF ANY).

Christian and Surnames of the Apprentices at full length.	Age.	Registry of Indenture.		Registry of Assignment.		Date, Place, and Cause of leaving this Ship, or of Death. *To be filled up by the Master.*		
		Date of	Port of	Date of	Port of	Date.	Place.	Cause
1	2	3	4	5	6	7	8	9

PARTICULARS RELATING TO WAGES AND EFFECTS OF SEAMEN AND APPRENTICES DECEASED DURING THE VOYAGE.

(Taken from the official log.)

Note.—Particulars of the moneys due to each deceased seaman, and his clothes and effects, and of Deductions (if any), are to accompany this return in a separate form W. and E. 1 (late KK.), which will be furnished by the superintendent. If any master fails to give a true account of these particulars, he will be liable to forfeit a sum not exceeding treble the value of the money and effects not accounted for, or to a penalty not exceeding £50.

Reference No. in Agreement.	Christian and Surname of Deceased.	Certificates, if any.		Net Amount of Wages paid to Superintendent, Officer of Customs, or Consul, as per Account in Form W & E 1.	Particulars of Effects (if any) delivered to Superintendent, Officer of Customs, or Consul, as per Account in Form W & E 1.
		Description. State whether "Mate's," "Engineer's," "Naval Reserve," &c.	Numbers.		
1	2	3	4	5	6

PARTICULARS OF ALL MARRIAGES THAT HAVE OCCURRED ON BOARD DURING THE VOYAGE.

(Taken from the official log.)

Note.—Section 282 of the "Mercantile Shipping Act, 1854," requires the master of a ship to enter in his official log the particulars of every marriage that has taken place on board; and sections 273 and 274 require that a list of such marriages should be made out and delivered to a superintendent of a mercantile marine office in the United Kingdom.

Date when Married.	Christian and Surnames of both Parties.	Ages.	State whether Single, Widow, or Widower.	Profession or Occupation.	Father's Christian and Surname.	Profession or Occupation of Father.
1	2	3	4	5	6	7

CERTIFICATES OR INDORSEMENTS MADE BY CONSULS OR BY OFFICERS IN BRITISH POSSESSIONS ABROAD.

This form of agreement for a foreign going ship is executed in eight pages. An office copy in red ink, containing all the first part up to and including the particulars of engagement, and the account of apprentices on board, is to be forwarded to the Registrar-General of Shipping and Seamen, when the agreement is made. No stamp is required (see s. 9, p. 10). On the eighth page there are indorsed the following Regulations for Maintaining Discipline, and Instructions to Masters:—

REGULATIONS FOR MAINTAINING DISCIPLINE,

SANCTIONED BY THE BOARD OF TRADE IN PURSUANCE OF THE MERCHANT SHIPPING ACT, S. 149.

THESE regulations are distinct from and in addition to those contained in the Act, and are sanctioned but not universally required by law. All or any of them may be adopted by agreement between a master and his crew, and thereupon the offences specified in such of them as are so adopted will be legally punishable by the appropriate fines or punishments.

These regulations are all numbered, and the numbers of such of them as are adopted must be inserted in the space left for that purpose in the agreement, page 1, and the following copy of these regulations must be made to correspond with the agreement by erasing such of the regulations as are not adopted. If the agreement is made before the superintendent of a mercantile marine office, his signature or initials must be placed opposite such of the regulations as are adopted.

For the purpose of legally enforcing any of the following penalties, the same steps must be adopted as in the case of other offences punishable under the act; that is to say, a statement of the offence must, immediately after its commission, be entered in the official log book by the direction of the master, and must at the same time be attested to be true by the signatures of the master and the mate, or one of the crew; and a copy of such entry must be furnished, or the same must be read over, to the offender, before the ship reaches any port or departs from the port at which she is; and an entry that the same has been so furnished or read over, and of the reply, if any, of the offender, must be made and signed in the same manner as the entry of the offence. These entries must, upon discharge of the offender, be shown to the superintendent of a mercantile marine office before whom the offender is discharged; and if he is satisfied that the offence is proved, and that the entries have been properly made, the fine must be deducted from the offender's wages, and paid over to the superintendent.

If, in consequence of subsequent good conduct, the master thinks fit to remit or reduce any fine upon any member of his crew which has been entered in the official log, and signifies the same to the superintendent, the fine shall be remitted or reduced accordingly. If wages are contracted for by the voyage or by share, the amount of the fines is to be ascertained in the manner in which the amount of forfeiture is ascertained in similar cases under sec. 252.

No.	Offence.	Amount of Fine or Punishment.	Superintendent's Signature or Initials.
1	Not being on board at the time fixed by the agreement	Two days' pay.	
2	Not returning on board at the expiration of leave	One day's pay.	
3	Insolence or contemptuous language or behaviour towards the master or any mate	One day's pay.	
4	Striking or assaulting any person on board or belonging to the ship	Two days' pay.	
5	Quarrelling or provoking to quarrel	One day's pay.	
6	Swearing or using improper language	One day's pay.	
7	Bringing or having on board spirituous liquors	Three days' pay.	
8	Carrying a sheath-knife	One day's pay.	
9	Drunkenness. First offence	Two days' half allowance of provisions.	
	Ditto. Second offence	Two days' pay.	
10	Neglect on the part of the officer in charge of the watch to place the look-out properly	Two days' pay.	
11	Sleeping or gross negligence while on the look-out	Two days' pay.	
12	Not extinguishing lights at the times ordered	One day's pay.	
13	Smoking below	One day's pay.	
14	Neglecting to bring up, open out, and air bedding, when ordered	Half day's pay.	
15	(For the Cook).—Not having any meal of the crew ready at the appointed time	One day's pay.	
16	Not attending Divine service on Sunday, unless prevented by sickness or duty of the ship	One day's pay.	
17	Interrupting Divine service by indecorous conduct	One day's pay.	
18	Not being cleaned, shaved, and washed on Sundays	One day's pay.	
19	Washing clothes on a Sunday	One day's pay.	
20	Secreting contraband goods on board with intent to smuggle	One month's pay.	
21	Destroying or defacing the copy of the agreement which is made accessible to the crew	One day's pay.	
22	If any officer is guilty of any act or default which is made subject to a fine, he shall be liable to a fine of twice the number of days' pay which would be exacted for a like act or default from a seaman, and such fine shall be paid and applied in the same manner as other fines.		

INSTRUCTIONS TO MASTERS.

Agreements.

1. The Merchant Shipping Act requires the master of every ship, *except ships of less than eighty tons exclusively employed in the coasting trade*, to enter into an agreement with every seaman whom he carries to sea as one of his crew. The term "seaman" includes every person, except masters, pilots, and apprentices (duly indentured and registered) employed or engaged in any capacity on board any ship.

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2. In order to enable the seamen to know the contents of the agreement, the master, at the commencement of the voyage is bound under a penalty of 5*l.* to have a legible copy (omitting the signatures) placed in an accessible part of the ship.

3. All alterations in any agreement (except additions in shipping substitutes) are inoperative unless proved to have been made with the consent of all persons interested, by the written attestation of a superintendent of a mercantile marine office, justice, officer of customs, consul, or vice-consul.

4. Fraudulently altering, or making any false entry in, or delivering a false copy of any agreement, or being party to such an act, may be punished by the infliction of a penalty not exceeding 100*l.*, or by imprisonment with or without hard labour for any period not exceeding six months.

5. The crews of all British foreign-going ships must be engaged in the United Kingdom in the presence of a superintendent of mercantile marine, who will read over and explain the agreement to the seamen before they are allowed to sign it.

6. Steamers, fruit vessels, and other foreign-going vessels, which make short and frequent voyages and keep the same crews, are allowed to have running agreements, lasting like those of home-trade ships for six months. The masters of these vessels are thus relieved from the necessity of discharging and re-engaging their crews at the mercantile marine office on each return to the United Kingdom. If the crew are engaged under a running agreement, the master, upon *every* return of the ship to the United Kingdom, is to deposit his agreement at the mercantile marine office, and is to discharge or engage any of his crew before the superintendent. Before the ship leaves port, the master is required to endorse on the agreement whether any changes have been or are intended to be made in his crew. Any false statement renders the master liable to a penalty not exceeding 20*l.*

Engagement of Crews and Seamen in the United Kingdom.

7. Whenever a master of a ship is desirous of making use of the mercantile marine office for the purpose of *selecting* his crew he must inform the superintendent, so that a notice may be published for the information of those men who are seeking employment.

8. In all cases the superintendent should have at least six hours notice of the time at which the master and crew are to attend to sign the agreement. Before the engagement of the crew is proceeded with, the master must—

(*a*) Produce the certificates for himself, his mates, and his engineers (if any).

(*b*) Pay all the fees.

(*c*) Produce the authority of his owners or their agents for his issuing allotment notes to his crew.

(*d*) Produce the apprentices destined for the voyage together with their indentures.

9. Upon the master complying with the above regulations, the superintendent will, when the engagement of the crew has been completed, give him a certificate for clearance outwards.

10. Superintendents will give the like certificate to masters of ships who have entered into running agreements with their crews, upon their

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complying with the regulations (6) above, and producing at the mercantile marine office the certificate of any mate or engineer engaged during or subsequent to the last voyage.

11. The engagement of substitutes for seamen who have died or left the ship within twenty-four hours of her putting to sea is to be made before a superintendent if practicable, but if not the master as soon as possible is to have the agreement read over and explained to the substitutes in the presence of a witness who is to attest their signatures.

12. Carrying any seaman to sea without entering into an agreement subjects the master of a foreign-going ship to a penalty of 5*l.*

13. The master of a foreign-going ship incurs a penalty of 5*l.* if he does not report to the nearest mercantile marine office any changes in his crew before he finally leaves the United Kingdom.

Ports abroad.

14. Upon the arrival of the ship at any foreign port where there is a British consular officer, or at any port in any British possession abroad, the master is bound under a *penalty of twenty pounds* to deliver within forty-eight hours of the ship's arrival (if the ship remains forty-eight hours at the port, and is not a passenger ship), to the consular officer, or the chief officer of customs, the agreement, and all indentures and assignments of apprenticeships. These the officer will keep during the ship's stay at the port, and will, within a reasonable time before the ship's departure, return them to the master, with a certificate stating when they were delivered and returned.

15. The engagement or discharge of any seaman abroad must be made before the British consul in a foreign port, or before the customs officer in a British possession, who will endorse upon the agreement a certificate accordingly. If this certificate be not made the master of the ship is liable to a penalty. (*See also paras.* 20, 21, *and* 22 *below.*)

Return to the United Kingdom.

16. The crew of every British foreign-going ship discharged in the United Kingdom must be discharged and receive their wages in the presence of a superintendent of a mercantile marine office. An infringement of this law renders the master or owner liable to a penalty of 10*l.*

17. In all cases in which crews are to be discharged at the mercantile marine office, at least twenty-four hours' notice should be given to the superintendent by the master or owner.

18. Within forty-eight hours after the ship's arrival at her final port of destination in the United Kingdom, or upon the discharge of the crew, whichever first happens, the master is to deliver to the superintendent of the mercantile marine office the agreement with a list of the crew and official log book, and accounts of the wages and effects of any seaman or apprentice who has died on board during the voyage, whether he formed part of the crew or not, any effects remaining unsold, and the balance of wages or other moneys belonging to any such seaman or apprentice. The master is also to deliver to the superintendent the certificates (mates, engineers, or seamen's, E 2, or R V 2) of any who have died or deserted during the voyage. The superintendent will then give a certificate for the purpose of clearance inwards.

19. The master is to give to every seaman (or leave with the superintendent on his behalf) an account, on a form sanctioned by the Board of Trade, of his wages, and of all deductions to be made therefrom, at least

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twenty-four hours before the time of payment or discharge, under a penalty of 5*l.* for non-compliance. Deductions for fines, forfeitures, &c. which are sought to be made in this account must be proved by proper entries made in the official log book.

20. Upon paying off or discharging any seaman, the master is bound under a penalty of 10*l.* to give the seaman a certificate of discharge, and the master is also bound under a penalty of 20*l.* to deliver to any certificated mate or engineer upon his discharge his certificate of competency or service.

21. A statement of the conduct, character, and qualification of each member of the crew, or a statement that he declines to give an opinion on such particulars, is to be entered and signed by the master in the official log book as required by the Act.

22. Upon payment of wages and settlement of disputes (if any) being effected, the officer before whom the men are discharged will require the crew to sign *in his presence* a release from all claims in respect of the voyage just finished.

This agreement is to be used only for voyages made on the coasts of the United Kingdom, or to the Islands of Jersey, Guernsey, Alderney, Sark, and Isle of Man, or to places on the Continent of Europe between the river Elbe and Brest, inclusive.

Eng. 6. late B. and D.—Sanctioned by the Board of Trade, May 1874. In pursuance of 17 & 18 Vict. c. 104.

*** *Any erasure, interlineation, or alteration in this agreement will be void, unless attested by some superintendent of a mercantile marine office, officer of customs, consul, or vice-consul, to be made with the consent of the persons interested.*

Date of Termination of Half Year.
187

No. .

EXECUTED IN TEN PAGES

HALF-YEARLY AGREEMENT AND ACCOUNT OF VOYAGES AND CREW OF A SHIP ENGAGED IN THE HOME TRADE ONLY.

☞ NOTICE.—As the agreement is made for voyages in the home trade only, the crew need not be engaged before a superintendent of mercantile marine. On whatever date the agreement is made it expires on the next following 30th day of June or 31st day of December next, as the case may be, and is then, or within twenty-one days afterwards, to be delivered to the superintendent of a mercantile marine office. If, however, the ship is absent from the United Kingdom on the 30th day of June or 31st day of December, then this agreement remains in force until the first arrival of the ship at her final port of destination in the United Kingdom after such date, or the discharge of cargo consequent on such arrival, when it is to be delivered up to a superintendent.

On this agreement and account of crew being duly completed and deposited at a mercantile marine office, the superintendent will issue the certificate C. C., to enable the ship to be cleared at the Custom House.

Neglect to deposit the returns within the time prescribed by the Merchant Shipping Act subjects the owner or master to a penalty, and will lead to delay in the issue of the clearance certificate and consequent detention of the ship.

N.B.—The master's attention is specially directed to the "Instructions to Masters of Home Trade Vessels," contained on p. 10 *of the Agreement*, see below, p. 144.

Name of Ship.	Official No.	Port of Registry.	Port No. and Date of Register.	Registered Tonnage.	Nominal Horse-power of Engines (if any).

Registered (Managing) Owner.		Master.		
Name.	Address. (State No. of House, Street, and Town.)	Name.	No. of Certificate (if any).	Address. (State No. of House, Street, and Town.)

Scale of Provisions

To be allowed and served out to the Crew during the Voyage.

	Bread lb.	Beef lb.	Pork lb.	Flour lb.	Peas pint.	Rice lb.	Tea oz.	Coffee oz.	Sugar oz.	Water qts.
Sunday . .										
Monday. . .										
Tuesday . .										
Wednesday .										
Thursday . .										
Friday . .										
Saturday . .										

Substitutes.

*

* Here any stipulation for changes or substitution of one article for another may be inserted.

The several Persons whose names are hereto subscribed, and whose descriptions are contained on the other side or sides, and of whom are engaged as sailors, hereby agree to serve, in the several capacities expressed against their respective names, on board the said ship, which is to be employed *

And the crew agree to conduct themselves in an orderly, faithful, honest, and sober manner, and to be at all times diligent in their respective duties, and to be obedient to the lawful commands of the said master or of any person who shall lawfully succeed him, and of their superior officers, in everything relating to the said ship and the stores and cargo thereof, whether on board, in boats, or on shore: in consideration of which services to be duly performed, the said master hereby agrees to pay to the said crew as wages the sums against their names respectively expressed, and to supply them with provisions according to the above scale: And it is hereby agreed, that any embezzlement or wilful or negligent destruction of any part of the ship's cargo or stores shall be made good to the owner out of the wages of the person guilty of the same: And if any person enters himself as qualified for a duty which he proves incompetent to perform, his wages shall be reduced in proportion to his incompetency; and it is also agreed that the regulations

* Here the probable nature of the ship's employment for the ensuing six months is to be described, thus, "In the coasting trade of the United Kingdom;" "In the home trade." The particulars of each voyage made under this agreement are to be inserted in the form provided on p. 10 *of the Agreement*.

for maintaining discipline sanctioned by the Board of Trade, which are printed herein and numbered † are adopted by the parties hereto, and shall be considered to be embodied in this agreement.

And it is also agreed, that if any member of the crew considers himself to be aggrieved by any breach of the agreement or otherwise, he shall represent the same to the master or officer in charge of the ship in a quiet and orderly manner, who shall thereupon take such steps as the case may require: And it is also agreed, that ‡

Date.	Place.

IN WITNESS whereof the said parties have subscribed their names on the other side or sides hereof on the days against the respective signatures mentioned.

_____ *Master's Signature.*

These columns to be filled in by the master at the end of the last voyage or half-year.			To be filled in by the Superintendent.
Date of Termination of the last Voyage.	Port at which the last Voyage terminated.	I hereby declare to the truth of the entries in this agreement and account of crew, &c. _____ Master.	Received at the day of 187 . _____ *Superintendent of Mercantile Marine.*

This form of agreement for a home trade ship is executed in ten pages. The particulars of engagement are similar to those in the agreement for a foreign going ship. Under the particulars of discharge, a space is left for a report of character, and entries of this are to be made under two headings, viz: For General Conduct, and For Ability in Seamanship.

The following forms relating to births and deaths at sea, are part of a home trade agreement. (See also sec. 37 of the Births and Deaths Registration Act, 1874, under sec. 274, p. 234.)

BIRTHS THAT HAVE OCCURRED ON BOARD DURING THE HALF YEAR.

Date of Birth. 1	Name (if any) and Sex of the Child. 2	Christian and Surname, and Rank, Profession, or Occupation of the Father. 3	Name and Surname and Maiden Surname of Mother. 4	Nationality and last Place of Abode of Father and Mother. 5

† Here are to be inserted the numbers of any of the regulations for maintaining discipline issued by the Board of Trade, and printed on p. 9 hereof, which the parties agree to adopt.

‡ Here any stipulations may be inserted to which the parties agree.

DEATHS THAT HAVE OCCURRED ON BOARD DURING THE HALF YEAR.

OF CREW.*					OF PASSENGERS OR OTHER THAN THE CREW.						
Reference No. in Agreement.	Name of Deceased.	Net Amount of Wages paid to Superintendent, Officer of Customs, or Consul, as per Account W & E 1.			Date of Death.	Christian and Surname of Deceased.	Sex.	Age.	Rank, Profession, or Occupation, if known.	Nationality and last Place of Abode.	Cause of Death.
1	2	3			4	5	6	7	8	9	10

* Particulars of the moneys due to each deceased seaman, and of his clothes and effects, and of deductions (if any), are to accompany this return in a separate Form W and E 1 (late KK.), which will be furnished by the superintendent. If any master fails to give a true account of these particulars, he will be liable to forfeit a sum not exceeding treble the value of e money and effects not accounted for, or to a penalty not exceeding £50.

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A statement of the dates of departure and dates of arrival at the several ports, must be entered on the last page. The regulations for maintaining discipline (given above, p. 137), are indorsed on the agreement, and it also contains the following Instructions to Masters engaged in the Home Trade.

INSTRUCTIONS TO MASTERS OF VESSELS ENGAGED IN THE HOME TRADE.

Home Trade Agreements.

Sect. 149. 1. The Merchant Shipping Act requires the master of every ship, *except ships of less than eighty tons exclusively employed in trading upon coasts of United Kingdom*, to enter into an agreement with every seaman whom he carries to sea as one of his crew. (The term "Seaman" includes every person, except masters, pilots, and apprentices (duly indentured and registered) employed or engaged in any capacity on board any ship.)

Sect. 157. 2. Neglect to comply with this regulation subjects the master or owner to a penalty not exceeding 5*l.* for every offence.

Sect. 155. 3. In order to enable the seamen to know the contents of the agreement, the master must cause the agreement to be read over and explained to each seaman, and the seaman will thereupon sign the same in the presence of a witness, who shall attest his signature.

Sect. 166. 4. The master is bound, under a penalty of 5*l.*, to have a legible copy of the agreement (omitting the signatures) placed in an accessible part of the ship.

Sect. 163. 5. All alterations in any agreement (except additions in shipping substitutes) are inoperative unless proved to have been made with the consent of all persons interested, by the written attestation of a superintendent of a mercantile marine office, justice, officer of customs, consul, or vice-consul, or where there is no such officer, of two respectable British merchants.

Sects. 164 and 518. 6. Fraudulently altering, or making any false entry in, or delivering

a false copy of any agreement, or being party to such an act, may be punished by the infliction of a penalty not exceeding 100*l.*, or by imprisonment with or without hard labour for any period not exceeding six months. **§ 149.**

Ports Abroad.

7. Upon the arrival of the ship at any foreign port where there is a British consular officer, the master is bound under a *penalty of twenty pounds* to deliver within forty-eight hours of the ship's arrival (if the ship remains forty-eight hours at the port, and is not a passenger ship), to the consular officer, the agreement, and all indentures and assignments of apprenticeships. These the consul will keep during the ship's stay at the port, and will, within a reasonable time before the ship's departure, return to the master, with a certificate stating when they were delivered and returned. Sect. 279.

8. The engagement or discharge of any seaman abroad *must be made before the British consul*, who will endorse upon the agreement a certificate accordingly. If this certificate be not made the master of the ship is liable to a penalty. (*See also pars.* 14 *and* 15 *below.*) Sects. 160, 205, and 207.

Official Log Books.

9. Every ship, of whatever tonnage, which trades to any port out of the United Kingdom, must carry an official log book, which must be delivered at the termination of the half-year or home-trade employment, with the agreement and account of crew, to the superintendent of a mercantile marine office. Sects. 280, 286, and 287.

10. The master's attention is specially directed to the instructions contained in the 2nd and 3rd pages of the official log book as to the entries which are required by law to be made therein.

11. On every occasion of the vessel proceeding to sea, the master is required, under a penalty of 20*l.*, to enter in the official log book the ship's draught of water. Sect. 5, M. S. Act of 1871.

Termination of Voyage or Half Year.

12. This agreement may not extend beyond the date of the first arrival of the ship at her final port of destination in the United Kingdom after the 30th June or 31st December next following. Sect. 162, par. 1.

13. Within twenty-one days after the 30th June or the 31st December, or previously if by change of employment the vessel leaves the home for the foreign trade, the master or owner is to deliver to the superintendent of mercantile marine a return in this form, together with accounts of the wages and effects of any seaman or apprentice, whether he formed part of the crew or not, who has died on board during the period of the home-trade agreement, and any effects remaining unsold and the balance of wages or other moneys belonging to any such seaman or apprentice. The master is also to deliver to the superintendent the certificates (mates, engineer's, or seamen's, R V 2) of any who have died or deserted during the voyage. The superintendent will then give a certificate for the purpose of clearance. Sect. 162, par. 2, and sects. 275 and 276.

14. The master is to give to every seaman (or leave with the superintendent on his behalf) an account, on a form sanctioned by the Board of Trade, of his wages, and of all deductions to be made therefrom, at least Sect. 171.

§ 149. twenty-four hours before the time of payment or discharge, under a penalty of 5*l.* for non-compliance. Deductions for fines, forfeitures, &c. which are sought to be made in this account must be proved by proper entries made in the official log book.

Sects. 172 and 510 of M. S. Act, 1862.

15. Upon paying off or discharging any seaman, the master is bound under a penalty of 10*l.* to give the seaman a certificate of discharge, and the master is also bound under a penalty of 20*l.* to return to any certificated mate or engineer upon his discharge his certificate of competency or service.

Sect. 176.

16. A statement of the conduct, character, and qualification of each member of the crew, or a statement that he declines to give an opinion on such particulars, is to be entered in this list and signed by the master.

Agreements with Seamen.

Are construed favourably for seamen.

Seamen are favourites of the law, and placed peculiarly under its protection (*a*). Where the meaning or construction of a seaman's contract admits of doubt, the Court will give the seaman the benefit of the doubt (*b*). Jurisdiction was given to the Admiralty Court over any claim by a seaman for wages earned by him on board his ship, and over any claim by the master for wages, by section 10 of the Admiralty Court Act, 1861 (24 Vic. c. 10).

Service in different vessels.

An agreement for "a voyage from Liverpool to the West Coast of Africa and back, *or*, for a term not to exceed three years," means that the owners will be disentitled to the seaman's services after the three years have ended, even though the voyage be not completed (*c*). And a stipulation that the services be rendered either on board the vessel in which the seaman leaves this country, or any other vessel of the same owner engaged in a similar adventure, will bind the seaman during the whole period agreed upon (*c*).

Further Remuneration.

Seamen undertake to meet ordinary emergencies.

When seamen have engaged to serve on board a ship, they "undertake to do all they can under all the emergencies of the voyage" (*d*), and therefore any promises of extra remuneration made by the master during any emergency, in order to make the seamen exert themselves, are void (*e*). So when a ship was in danger, and the master promised a seaman five guineas to perform some extra work, the promise was held to be wholly void (*f*). Where some of the crew deserted, and the master promised to raise the wages of the rest of the crew for the remaining part of the voyage, the promise was not binding, as the crew were bound by their articles for the whole voyage (*g*). Nor can a sailor who has signed articles for a voyage, claim any further wages or gratuity, by usage or custom (*h*).

Promises of extra pay void.

Claim by usage void.

(*a*) *The Minerva*, 1 Hagg. Ad. 358; *The Juliana*, 1 Dods. Ad. 463.
(*b*) *The Hoghton*, 3 Hagg. Ad. 112; *Jansen* v. *Heinrich*, Crabbe (Amer. Rep.), 226.
(*c*) *Frazer* v. *Hutton*, 2 C. B. N. S. 512.
(*d*) *Stilk* v. *Myrick*, 2 Camp. 317, *per* Lord Ellenborough, C. J.
(*e*) *The Lockwoods*, 1 Stuart's Vice Ad. Rep. (Quebec), 123.
(*f*) *Harris* v. *Watson*, 1 Peake (3rd ed.), 102.
(*g*) *Harris* v. *Carter*, 3 E. & B. 559; 23 L. J. Q. B. 295.
(*h*) *Elsworth* v. *Woolmore*, 5 Esp. 84.

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However, sailors are not bound by the articles to expose their lives to very unusual danger, and therefore where the crew is so reduced that to proceed is very dangerous (and the jury must judge of this), and the master, as an inducement to the remaining crew to face the increased risk, promises them extra wages, such a promise will be binding, unless made under duress (*i*). But if a sailor during a voyage enters upon and fulfils the duties of a post superior to that he commenced with, he is entitled to the higher rate of wages belonging to such post (*k*); and if the original contract of hiring is dissolved, as for instance by an entire change in the voyage, or the sale of the ship, the sailor may enter into a new agreement for a higher rate of wages (*l*). (See also sec. 182, p. 167, and sec. 214, p. 192, as to what stipulations are inoperative and void, and sec. 483, p. 405, as to claims for salvage.)

Promise valid if to induce seaman to meet great extra risk.

When sailor enters upon a superior post.

Dissolution of contract.

150. In the case of all foreign-going ships, in whatever part of Her Majesty's dominions the same are registered, the following rules shall be observed with respect to agreements; (that is to say,)

For foreign-going ships such agreements, when made in the United Kingdom, except in special cases, to be made before and attested by a superintendent.

(1.) Every agreement made in the United Kingdom (except in such cases of agreements with substitutes as are hereinafter specially provided for) shall be signed by each seaman in the presence of a superintendent of a mercantile marine office.

(2.) Such superintendent shall cause the agreement to be read over and explained to each seaman, or otherwise ascertain that each seaman understands the same before he signs it, and shall attest each signature:

(3.) When the crew is first engaged the agreement shall be signed in duplicate, and one part shall be retained by the superintendent, and the other part shall contain a special place or form for the descriptions and signatures of substitutes or persons engaged subsequently to the first departure of the ship, and shall be delivered to the master:

To be in duplicate.

(4.) In the case of substitutes engaged in the place of seamen who have duly signed the agreement, and whose services are lost within twenty-four hours of the ship's putting to sea by death, desertion, or other unforeseen cause, the engagement shall, when practicable, be made before some superintendent of a mercantile marine

Provision for substitutes.

(*i*) *Hartley* v. *Ponsonby*, 7 E. & B. 872; *The Araminta*, 1 Spinks, E. & A. 229.

(*k*) *The Providence*, 1 Hagg. Ad. 391; *Hanson* v. *Royden*, L. R. 3 C. P. 47; 3 Mar. Law Cas. 8.

(*l*) *Harris* v. *Carter*, 3 E. & B. 561.

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office duly appointed in the manner hereinbefore specified; and whenever such last mentioned engagement cannot be so made, the master shall, before the ship puts to sea, if practicable, and if not, as soon afterwards as possible, cause the agreement to be read over and explained to the seamen; and the seamen shall thereupon sign the same in the presence of a witness, who shall attest their signatures.

Foreign-going ships making short voyages may have running agreements.

151. In the case of foreign-going ships making voyages averaging less than six months in duration, running agreements with the crew may be made to extend over two or more voyages, so that no such agreement shall extend beyond the next following thirtieth day of June or thirty-first day of December, or the first arrival of the ship at her port of destination in the United Kingdom after such date, or the discharge of cargo consequent upon such arrival; and every person entering into such agreement, whether engaged upon the first commencement or otherwise, shall enter into and sign the same in the manner hereby required for other foreign-going ships; and every person engaged thereunder, if discharged in the United Kingdom, shall be discharged in the like manner hereby required for the discharge of seamen belonging to other foreign-going ships. (*See sec.* 162, *p.* 152.)

Engagement and discharge of seamen in the meantime.

152. The master of every foreign-going ship for which such a running agreement as aforesaid is made shall, upon every return to any port in the United Kingdom before the final termination of the agreement, discharge or engage before the superintendent of a mercantile marine office at such port any seaman whom he is required by law so to discharge or engage, and shall upon every such return indorse on the agreement a statement (as the case may be) either that no such discharges or engagements have been made or are intended to be made before the ship again leaves port, or that all such discharges or engagements have been duly made as hereinbefore required, and shall deliver the agreement so indorsed to the superintendent, and any master who wilfully makes a false statement in such indorsement shall incur a penalty not exceeding 20*l.*; and the superintendent shall also sign an indorsement on the agreement to the effect that the provisions of this Act relating to such agreement have been complied with, and shall redeliver the agreement so indorsed to the master.

153. In cases in which such running agreements are made, the duplicate agreement retained by the superintendent upon the first engagement of the crew shall either be transmitted to the Registrar-General of Shipping and Seamen immediately, or be kept by the superintendent until the expiration of the agreement, as the Board of Trade directs.

Duplicates of running agreements, how to be dealt with.

154. For the purpose of determining the fees to be paid upon the engagement and discharge of seamen belonging to foreign-going ships which have running agreements as aforesaid, the crew shall be considered to be engaged when the agreement is first signed, and to be discharged when the agreement finally terminates, and all intermediate engagements and discharges shall be considered to be engagements and discharges of single seamen.

Fees to be paid on such running agreements.

155. In the case of home-trade ships, crews or single seamen may, if the master thinks fit, be engaged before a superintendent of a mercantile marine office in the manner hereinbefore directed with respect to foreign-going ships; and in every case in which the engagement is not so made, the master shall, before the ship puts to sea, if practicable, and if not, as soon afterwards as possible, cause the agreement to be read over and explained to each seaman, and the seaman shall thereupon sign the same in the presence of a witness, who shall attest his signature.

In home-trade ships agreement to be entered into before a superintendent or other witness.

156. In cases where several home-trade ships belong to the same owner, the agreement with the seamen may, notwithstanding anything herein contained, be made by the owner instead of by the master, and the seamen may be engaged to serve in any two or more of such ships, provided that the names of the ships and the nature of the service are specified in the agreement; but with the foregoing exception all provisions herein contained which relate to ordinary agreements for home-trade ships shall be applicable to agreements made in pursuance of this section.

Special agreements for home-trade ships belonging to same owners.

157. If in any case a master carries any seaman to sea without entering into an agreement with him in the form and manner and at the place and time hereby in such case required, the master in the case of a foreign-going ship, and the master or owner in the case of a home-trade ship, shall for each such offence incur a penalty not exceeding 5*l.*

Penalty for shipping seamen without agreement duly executed.

158. The master of every foreign-going ship of which the

Changes in

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crew has been engaged before a superintendent of a mercantile marine office shall, before finally leaving the United Kingdom, sign and send to the nearest superintendent a full and accurate statement in a form sanctioned by the Board of Trade of every change which takes place in his crew before finally leaving the United Kingdom, and in default shall for each offence incur a penalty not exceeding 5*l.*; and such statement shall be admissible in evidence, subject to all just exceptions.

crew to be reported.

Seamen engaged in the colonies to be shipped before some superintendent or officer of customs.

159. Every master of a ship who, if such ship is registered in the United Kingdom, engages any seaman in any British possession, or if such ship belongs to any British possession engages any seaman in any British possession other than that to which the ship belongs, shall, if there is at the place where such seaman is engaged any official superintendent, or other officer duly appointed for the purpose of shipping seamen, engage such seamen before such superintendent, and if there is no such superintendent or officer, then before some officer of customs; and the same rules, qualifications, and penalties as are hereinbefore specified with respect to the engagement of seamen before superintendents of mercantile marine offices in the United Kingdom, shall apply to such engagements in a British possession; and upon every such engagement, such superintendent or officer as aforesaid shall indorse upon the agreement an attestation to the effect that the same has been signed in his presence, and otherwise made as hereby required; and if in any case such attestation is not made, the burden of proving that the seaman was duly engaged as hereby required shall lie upon the master.

Seamen engaged in foreign ports to be shipped with the sanction and in the presence of the consul.

160. Every master of a British ship who engages any seaman at any place out of Her Majesty's dominions in which there is a British consular officer shall, before carrying such seaman to sea, procure the sanction of such officer, and shall engage such seaman before such officer; and the same rules as are hereinbefore contained with respect to the engagement of seamen before superintendents of mercantile marine offices in the United Kingdom shall apply to such engagements made before consular officers; and upon every such engagement the consular officer shall indorse upon the agreement his sanction thereof, and an attestation to the effect that the same has been signed in his presence, and otherwise made as hereby required;

Penalty.

and every master who engages any seaman in any place in

which there is a consular officer, otherwise than as hereinbefore required, shall incur a penalty not exceeding 20*l.*; and if in any case the indorsement and attestation hereby required is not made upon the agreement, the burden of proving the engagement to have been made as hereinbefore required shall lie upon the master.

Production of Agreements and Certificates.

161. The following rules shall be observed with respect to the production of agreements and certificates of competency or service for foreign-going ships; (that is to say,)

Rules as to production of agreements and certificates of masters and mates of foreign-going ships.

(1.) The master of every foreign-going ship shall, on signing the agreement with his crew, produce to the superintendent of a mercantile marine office before whom the same is signed the certificates of competency or service which the said master and his first and second mate or only mate, as the case may be, are hereby required to possess; and upon such production being duly made, and the agreement being duly executed as hereby required, the superintendent shall sign and give to the master a certificate to that effect:

Running agreements for foreign-going ships.

(2.) In the case of running agreements for foreign-going ships the superintendent shall, before the second and every subsequent voyage made after the first commencement of the agreement, sign and give to the master, on his complying with the provisions herein contained with respect to such agreements, and producing to the superintendent the certificate of competency or service of any first, second, or only mate then first engaged by him, a certificate to that effect:

Certificate to be produced.

(3.) The master of every foreign-going ship shall, before proceeding to sea, produce the certificate so to be given to him by the superintendent as aforesaid to the collector or comptroller of customs, and no officer of customs shall clear any such ship outwards without such production; and if any such ship attempts to go to sea without a clearance, any such officer may detain her until such certificate as aforesaid is produced:

On arrival of ship.

(4.) The master of every foreign-going ship shall, within forty-eight hours after the ship's arrival at her final port of destination in the United Kingdom, or upon the

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discharge of the crew, whichever first happens, deliver such agreement to a superintendent of a mercantile marine office at the place; and such superintendent shall thereupon give to the master a certificate of such delivery; and no officer of customs shall clear any foreign-going ship inwards without the production of such certificate:

Penalty.

And if the master of any foreign-going ship fails to deliver the agreement to a superintendent of a mercantile marine office at the time and in the manner hereby directed, he shall for every default incur a penalty not exceeding 5*l*.

Rules as to production of agreements and certificates for home-trade ships.

162. The following rules shall be observed with respect to the production of agreements and certificates of competency or service for home-trade ships; (that is to say,)

(1.) In the case of home-trade ships of more than eighty tons burden, no agreement shall extend beyond the next following thirtieth day of June or thirty-first day of December, or the first arrival of the ship at her final port of destination in the United Kingdom after such date, or the discharge of cargo consequent upon such arrival: (*See next page.*)

(2.) The master or owner of every such ship shall, within twenty-one days after the thirtieth day of June and the thirty-first day of December in every year, transmit or deliver to some superintendent of a mercantile marine office in the United Kingdom every agreement made within six calendar months next preceding such days respectively, and shall also in the case of home-trade passenger ships produce to the superintendent the certificates of competency or service which the said master, and his first or only mate, as the case may be, are hereby required to possess:

(3.) The superintendent shall thereupon give to the master or owner a certificate of such delivery and production; and no officer of customs shall grant a clearance or transire for any such ship as last aforesaid without the production of such certificate; and if any such ship attempts to ply or go to sea without such clearance or transire, any such officer may detain her until the said certificate be produced:

Penalty.

And if the agreement for any home-trade ship is not deli-

vered or transmitted by the master or owner to a superintendent at the time and in the manner hereby directed, such master or owner shall for every default incur a penalty not exceeding 5*l.*

Owner or agent of home-trade ships may enter into time agreements which need not expire half-yearly.

35 & 36 Vict. c. 73, s. 16.—The owner of home-trade ships or his agent may enter into time agreements, in forms to be sanctioned by the Board of Trade, with individual seamen to serve in any one or more ships belonging to him, which agreements need not expire on either the thirtieth day of June or the thirty-first day of December, anything in the Merchant Shipping Act to the contrary notwithstanding: Provided always, that a duplicate of each agreement entered into under the provisions of the section be forwarded to the Registrar-General of Shipping and Seamen within forty-eight hours after it has been entered into.

Alterations to be void unless attested to have been made with the consent of all parties.

163. Every erasure, interlineation, or alteration in any such agreement with seamen as is required by the third part of this Act (except additions so made as hereinbefore directed for shipping substitutes or persons engaged subsequently to the first departure of the ship) shall be wholly inoperative, unless proved to have been made with the consent of all the persons interested in such erasure, interlineation, or alteration by the written attestation (if made in Her Majesty's dominions) of some superintendent of a mercantile marine office, justice, officer of customs, or other public functionary, or (if made out of Her Majesty's dominions) of a British consular officer, or, where there is no such officer, of two respectable British merchants.

Penalty for falsifying agreement.

164. Every person who fraudulently alters, assists in fraudulently altering, or procures to be fraudulently altered, or makes, or assists in making, or procures to be made, any false entry in, or delivers, assists in delivering, or procures to be delivered, a false copy of any agreement, shall for each such offence be deemed guilty of a misdemeanor.

Seamen not to be bound to produce agreement.

165. Any seaman may bring forward evidence to prove the contents of any agreement or otherwise to support his case, without producing or giving notice to produce the agreement or any copy thereof.

This section creates an exception to the ordinary rules of evidence, but it only allows the seaman to prove what were the actual contents of the agreement, and does not allow him to bring forward evidence of

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any claims he may have that were not inserted in it (*m*). Agreements with seamen are subject to the ordinary rule, that where a written agreement exists, it must be taken to represent the final contract between the parties; and terms which are verbally agreed upon before or at the time of the writing, but which are not contained in it, are not binding (*n*).

Copy of agreement to be made accessible to crew.

166. The master shall at the commencement of every voyage or engagement cause a legible copy of the agreement (omitting the signatures) to be placed or posted up in such part of the ship as to be accessible to the crew, and in default shall for each offence incur a penalty not exceeding 5*l*.

Seamen discharged before voyage to have compensation.

167. Any seaman who has signed an agreement, and is afterwards discharged before the commencement of the voyage, or before one month's wages are earned, without fault on his part justifying such discharge and without his consent, shall be entitled to receive from the master or owner, in addition to any wages he may have earned, due compensation for the damage thereby caused to him, not exceeding one month's wages, and may on adducing such evidence as the court hearing the case deems satisfactory of his having been so improperly discharged as aforesaid, recover such compensation as if it were wages duly earned.

This would seem not to include the case of an engagement at a gross sum for an entire voyage (*o*). General incapacity, drunkenness, neglect of duty, and disobedience, if proved, are fully sufficient to justify a discharge (*p*); (as to forfeiture of wages, see sec. 171, p. 157). The seaman can recover compensation under this section in the summary manner provided for in sec. 188. If he does not exert himself in case of a wreck, his claim is barred (see sec. 183, p. 169).

Allotment of Wages.

Regulations as to allotment notes.

168. All stipulations for the allotment of any part of the wages of a seaman during his absence which are made at the commencement of the voyage shall be inserted in the agreement, and shall state the amounts and times of the payments to be made; and all allotment notes shall be in forms sanctioned by the Board of Trade.

(*m*) *The Isabella*, 2 C. Rob. 241; *Elsworth* v. *Woolmore*, 5 Esp. 84.
(*n*) *Goss* v. *Lord Nugent*, 5 B. & Ad. 58.
(*o*) Maclachlan on Shipping (2nd. ed), p. 225.
(*p*) *Robinett* v. *The Exeter*, 2 C. Rob. 263.

(L)

No

day of 18 .

Ship

O. No. Port of

Master

Voyage to

Seaman

Amount of note, £

Payable month

after

to

Seaman's

at

☞ *Notice to Owners or Agents.—Seamen's allotments of wages may be remitted from port to port, free of expense, by means of seamen's money-orders, to be obtained at the Mercantile Marine Offices.*

(L) SEAMAN'S ALLOTMENT NOTE.

Sanctioned by the Board of Trade February, 1868, in pursuance of 17 & 18 Vict. c. 104, s. 168.

Name of Ship.	Official Number.	Now bound on a Voyage to

No. Dated at this day of 18 . Month

pay the sum of pounds shillings and pence, part of the wages of , engaged to serve as in the above-named ship, to , his* , and continue to make such payment monthly, until duly stopped according to law.†

£ . Master.‡

To . Seaman.

Payable at . Witness.

Supt. Mercantile Marine Office.

* Here insert the word "wife," "sister," or other description of relationship, if any (*a*). In case of a wife the marriage certificate must be produced, if required, when payment is demanded.

† Security for repayment in case of desertion, if required, is to be given by the seaman when this allotment note is granted.

‡ If the owner or agent give the note, this must be altered accordingly.

(*a*) *Caution.—The Act provides a summary remedy, under certain conditions, for the recovery of sums allotted when the notes are made in favour of the wife, father, mother, grandfather, grandmother, child or grandchild, brother or sister of the seaman, but provides no remedy whatever in the case of notes given in favour of other persons.*

[*Endorsement.*]

RECEIVED ON THE WITHIN WRITTEN NOTE.

Date.	Sums received. £	s.	d.	Signature of Payee.

§ 169.

Allotment notes may be sued on summarily by certain persons and under certain conditions.

169. The wife, or the father or mother, or the grandfather or grandmother, or any child or grandchild, or any brother or sister of any seaman in whose favour an allotment note of part of the wages of such seaman is made, may, unless the seaman is shown in manner hereinafter mentioned to have forfeited or ceased to be entitled to the wages out of which the allotment is to be paid, and subject, as to the wife, to the provision hereinafter contained, sue for and recover the sums allotted by the note when and as the same are made payable, with costs, from the owner or any agent who has authorised the drawing of the note, either in the county court or in the summary manner in which seamen are by this Act enabled to sue for and recover wages not exceeding 50*l.*; and in any such proceeding it shall be sufficient for the claimant to prove that he or she is the person mentioned in the note, and that the note was given by the owner or by the master or some other authorised agent; and the seaman shall be presumed to be duly earning his wages, unless the contrary is shown to the satisfaction of the court, either by the official statement of the change in the crew caused by his absence made and signed by the master, as by this Act is required, or by a duly certified copy of some entry in the official log book to the effect that he has left the ship, or by a credible letter from the master of the ship to the same effect, or by such other evidence, of whatever description, as the court in its absolute discretion considers sufficient to show satisfactorily that the seaman has ceased to be entitled to the wages out of which the allotment is to be paid: Provided that the wife of any seaman who deserts her children, or so misconducts herself as to be undeserving of support from her husband, shall thereupon forfeit all right to further payments of any allotment of his wages which has been made in her favour.

This introduces an exception to the common law rule, that the consideration for the promise should move from the plaintiff to the defendant (*q*). Advance notes in anticipation of future wages are frequently given by masters. A note was given in this form "Ten days after the ship Athlone sails from the port of Liverpool, the undersigned does promise and agree to pay to any person who shall advance to Reuben Hill on this agreement the sum of 6*l.*, provided Reuben Hill shall sail in the ship from the port of Liverpool." For this note an outfitter gave 3*l.* 15*s.* in cash, and 2*l.* 15*s.* in wearing apparel, and it was held that the

(*q*) *Crow* v. *Rogers*, 1 Strange, 592; *Price* v. *Easton*, 4 B. & Ad. 433.

condition on which the holder was entitled to sue the maker, was fulfilled (*r*).

Discharge and Payment of Wages.

Discharge from foreign-going ships to be made before superintendent.

170. In the case of all British foreign-going ships, in whatever part of Her Majesty's dominions the same are registered, all seamen discharged in the United Kingdom shall be discharged and lose their wages in the presence of a superintendent of a mercantile marine office duly appointed under this Act, except in cases where some competent court otherwise directs; and any master or owner of any such ship who discharges any seaman belonging thereto, or, except as aforesaid, pays his wages within the United Kingdom in any other manner, shall incur a penalty not exceeding 10*l.*; and in the case of home-trade ships seamen may, if the owner or master so desires, be discharged and receive their wages in like manner.

A Naval Court may dismiss a seaman (see sec. 263, p. 227).

Master to deliver account of wages.

171. Every master shall not less than twenty-four hours before paying off or discharging any seaman deliver to him, or if he is to be discharged before a superintendent of a mercantile marine office, to such superintendent a full and true account in a form sanctioned by the Board of Trade of his wages and of all deductions to be made therefrom on any account whatever, and in default shall for each offence incur a penalty not exceeding 5*l.*; and no deduction from the wages of any seaman (except in respect of any matter happening after such delivery) shall be allowed unless it is included in the account so delivered; and the master shall during the voyage enter the various matters in respect of which such deductions are made, with the amounts of the respective deductions, as they occur, in a book to be kept for that purpose, and shall, if required, produce such book at the time of the payment of wages, and also upon the hearing before any competent authority of any complaint or question relating to such payments.

Forfeiture of Wages.

What conduct causes a forfeiture.

Besides being subject to the fines and forfeitures imposed by this Act (see sec. 243, p. 213), the seaman may forfeit his wages by the maritime

(*r*) *M'Kune* v. *Joynson*, 5 C. B. N. S. 218.

§ 171. law, by desertion (*a*), (and see under sec. 243, as to what constitutes desertion); by habitual drunkenness and disobedience (*b*); by general neglect of duty, or by neglect followed by injurious consequences to the ship (*c*); and by misconduct that has rendered the discharge of the seaman imperatively necessary for the safety of the ship and the due preservation of discipline (*d*), (see also sec. 239, p. 209, where such offences are made misdemeanors).

Misconduct must be habitual.

But the whole of the wages will not be forfeited for a single act of drunkenness or neglect of duty (*e*). The misconduct must be habitual and gross (*f*).

Master and officers.

A greater degree of self-restraint is expected from the master and officers of the ship, and hence a lesser amount of misconduct on the part of an officer will work a forfeiture of his wages than if he was a seaman (*g*).

Mutiny.

In the case of a mutiny of part of the crew, the other sailors are not discharged from their duty to the owners. They are bound if possible to recover the ship by using their best endeavours, whenever there is a reasonable prospect of success, but not to sacrifice their lives wantonly. Their conduct on such an occasion may involve a forfeiture of wages (*h*).

Wreck.

In cases of wreck, if the seaman does not exert himself to the utmost to save the ship, his claim to wages is barred (see sec. 183, p. 169). See under sec. 149, p. 137, as to the regulations for preserving discipline sanctioned by the Board of Trade.

Contract to perform voyage for a fixed sum.

It is often very difficult to draw a distinction between a contract to perform a whole voyage for a fixed sum, and a contract to perform it for a series of terminal payments; that is to say, the difficulty lies in ascertaining whether the intention of the parties was that the right to the wages should be divisible or not. If it is divisible, the wages become a debt at the end of each period, but if not, nothing is due till the whole service is performed (*i*). Where a master was engaged to take charge of a vessel during a whole voyage, the pay to be "a fixed pay of 50*l.* per month," and in the middle of the voyage he refused to proceed, Pollock, C. B., said that "per month" means "each month," or "monthly," and gives a cause of action as each month's wages accrues, which once vested is not subsequently divested by the plaintiff's abandonment of his contract (*k*). And where a mate agreed to serve at "5*l.* 10*s.* per calendar month for a succession of voyages, not expected to exceed twelve months," and was left behind by his own negligence, and was also drunk and abusive, it was held that his wages were vested and a debt at the end of each month's service, but subject perhaps to for-

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(*a*) *The Baltic Merchant*, Edw. 86.

(*b*) *Robinett* v. *The Exeter*, 2 C. Rob. 264; *The Lady Campbell*, 2 Hagg. Ad. 9.

(*c*) *The Duchess of Kent*, 1 W. Rob. 283.

(*d*) *The Blake*, 1 W. Rob. 73.

(*e*) *The Malta*, 2 Hagg. Ad. 168; *The Roebuck*, 2 Asp. Mar. Law Cas. 387.

(*f*) *The New Phœnix*, 1 Hagg. Ad. 198; *The Atlantic*, Lush. 566; *The Gondolier*, 3 Hagg. Ad. 191; *The Ship Mentor*, 4 Mason (Amer. Rep.), 84.

(*g*) *Robinet* v. *The Exeter*, 2 C. Rob. 261; *The Lima*, 3 Hagg. Ad. 347; *The Atlantic*, 7 L. T. N. S. 647; *The Camilla*, Swa. 312; *The Olive*, 1 Sprague (Amer. Rep.), 9.

(*h*) *The Governor Raffles*, 2 Dods. Ad. 18.

(*i*) *Cutter* v. *Powell*, 2 S. L. C. (7th ed.) 1.

(*k*) *Taylor* v. *Laird*, 1 H. & N. 266.

feiture. The judges, however, disagreed, and Brett, J., thought the whole of the wages were forfeited (*l*). (See sec. 252, p. 222.)

Waiver of forfeiture.

If a seaman has forfeited his wages, and after such forfeiture the master receives him back again, and allows him to work like the others, the forfeiture is waived (*m*), but if the ship is in distress, and the master calls upon a seaman who has forfeited his wages, to assist in rescuing the ship, this is no waiver, unless the master continues to employ the seaman after the peril is over (*n*).

By an Act of the reign of Charles II. (*o*), it is provided, that any seaman who refuses to assist in the defence of the ship against pirates, or who discourages the other mariners, is to forfeit his wages. And by an Act of the reign of George I. (*p*), if this offence is committed on board a ship which carries guns, and the vessel falls into the hands of the pirate, the mariners are liable in addition to the loss of wages to six months imprisonment. Whatever may be the faults of our sailors, the fear of pirates, or indeed of anything else, cannot be laid to their charge, and hence these enactments have been practically a dead letter.

Certificate of Discharge.

On discharge, masters to give seamen certificates of discharge, and return certificates of competency or service to mates.

172. Upon the discharge of any seaman, or upon payment of his wages, the master shall sign and give him a certificate of his discharge, in a form sanctioned by the Board of Trade, specifying the period of his service and the time and place of his discharge; and if any master fails to sign and give to any such seaman such certificate of discharge he shall for each such offence incur a penalty not exceeding 10*l.*: and the master shall also, upon the discharge of every certificated mate whose certificate of competency or service has been delivered to and retained by him, return such certificate, and shall in default incur a penalty not exceeding 20*l.*

Superintendent of a mercantile marine office may decide questions which parties refer to him.

173. Every superintendent of a mercantile marine office shall hear and decide any question whatever between a master or owner, and any of his crew which both parties agree in writing to submit to him; and every award so made by him shall be binding on both parties, and shall in any legal proceeding which may be taken in the matter before any court of justice be deemed to be conclusive as to the rights of the parties; and no such submission or award shall require a stamp; and any document purporting to be such submission or award shall be *prima facie* evidence thereof.

(*l*) *Button* v. *Thompson*, L. R. 4 C. P. 330; and compare notes to *Cutter* v. *Powell* in 2 S. L. C. (7th ed.) 1.

(*m*) *Miller* v. *Brant*, 2 Camp. 589; Kent's Commentaries (12th ed. 1873), III. 273, 199*; *Cloutman* v. *Tunison*, 1 Summer (Amer. Rep.), 375.

(*n*) *Train* v. *Bennett*, 3 C. & P. 3.

(*o*) 22 & 23 Car. II. c. 11, s. 7.

(*p*) 8 Geo. I. c. 24, s. 6; Maud and Pollock on Merchant Shipping, 156.

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Master and others to produce ship's papers to superintendents and give evidence.

174. In any proceeding relating to the wages, claims, or discharge of any seaman carried on before any superintendent of a mercantile marine office under the provisions of this Act, such superintendent may call upon the owner or his agent, or upon the master or any mate or other member of the crew, to produce any log-books, papers, or other documents in their respective possession or power relating to any matter in question in such proceeding, and may call before him and examine any of such persons being then at or near the place on any such matter; and every owner, agent, master, mate, or other member of the crew who when called upon by the superintendent does not produce any such paper or document as aforesaid, if in his possession or power, or does not appear and give evidence, shall, unless he shows some reasonable excuse for such default, for each such offence incur a penalty not exceeding 5*l.*

Settlement of wages.

175. The following rules shall be observed with respect to the settlement of wages; (that is to say,)

Release to be signed before and attested by superintendent.

(1.) Upon the completion before a superintendent of a mercantile marine office of any discharge and settlement, the master or owner, and each seaman shall respectively in the presence of the superintendent sign in a form sanctioned by the Board of Trade a mutual release of all claims in respect of the past voyage or engagement, and the superintendent shall also sign and attest it, and shall retain and transmit it as herein directed:

To be a discharge;

(2.) Such release so signed and attested shall operate as a mutual discharge and settlement of all demands between the parties thereto in respect of the past voyage or engagement:

and to be evidence.

(3.) A copy of such release certified under the hand of such superintendent to be a true copy shall be given by him to any party thereto requiring the same; and such copy shall be receivable in evidence upon any future question touching such claims as aforesaid, and shall have all the effect of the original of which it purports to be a copy:

No other receipt to be a discharge.

(4.) In cases in which discharge and settlement before a superintendent are hereby required, no payment, receipt, settlement, or discharge otherwise made shall operate or be admitted as evidence of the release or satisfaction of any claim:

(5.) Upon any payment being made by a master before a superintendent, the superintendent shall, if required, sign and give to such master a statement of the whole amount so paid; and such statement shall as between the master and his employer be received as evidence that he has made the payments therein mentioned.

Voucher to be given to master, and to be evidence.

Master to make reports of character.

176. Upon every discharge effected before a superintendent of a mercantile marine office, the master shall make and sign in a form sanctioned by the Board of Trade a report of the conduct, character, and qualifications of the persons discharged, or may state in a column to be left for that purpose in the said form that he declines to give any opinion upon such particulars or upon any of them; and the superintendent shall transmit the same to the Registrar-General of Shipping and Seamen, or to such other person as the Board of Trade directs, to be recorded, and shall, if desired so to do by any seaman, give to him or indorse on his certificate of discharge a copy of so much of such report as concerns him; and every person who makes, assists in making, or procures to be made any false certificate or report of the service, qualifications, conduct, or character of any seaman, knowing the same to be false, or who forges, assists in forging, or procures to be forged, or fraudulently alters, assists in fraudulently altering, or procures to be fraudulently altered, any such certificate or report, or who fraudulently makes use of any certificate or report or of any copy of any certificate or report which is forged or altered or does not belong to him, shall for each such offence be deemed guilty of a misdemeanor.

Falsification of report a misdemeanor.

Remittance of Wages and Savings Bank for Seamen.

Facilities may be given for remitting seamen's wages.

177. Facilities shall, if the Board of Trade so directs, be given for remitting the wages and other monies of seamen and apprentices to their relatives or other persons by means of money orders issued by superintendents of mercantile marine offices, and the Board of Trade may make regulations concerning such orders, and the persons by or to whom, and the mode and time in and at which, the same are to be paid, and may from time to time repeal or alter any such regulations; and all such regulations, so long as they are in force, shall be binding upon all persons interested or claiming to be interested in such orders, as well as upon the officers employed in

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issuing or paying the same; and no legal proceeding shall be instituted against the Board of Trade, or against any superintendent of a mercantile marine office or other public officer employed about such orders, on account of any such regulations, or on account of any act done or left undone in pursuance thereof, or on account of any refusal, neglect, or omission to pay any such money order, unless such refusal, neglect, or omission arise from fraud or wilful misbehaviour on the part of the person against whom proceedings are instituted.

Power to pay when order is lost.

178. The Board of Trade may, in any case in which it thinks fit so to do, cause the amount of any such money order as aforesaid to be paid to the person to whom or in whose favour the same may have been granted, or to his personal representatives, legatees, or next of kin, notwithstanding that such order may not be in his or their possession; and in all such cases from and after such payment the Board of Trade and every superintendent of a mercantile marine office, or other officer of the Board of Trade, shall be freed from all liability in respect of such order.

Penalty for issuing money orders with fraudulent intent.

179. Every superintendent of a mercantile marine office or other public officer who grants or issues any money order with a fraudulent intent, shall in England or Ireland be deemed guilty of felony, and in Scotland of a high crime and offence, and shall be liable to be kept in penal servitude for a term not exceeding *five* years. (*See under sec.* 203, *p.* 183.)

Savings banks for seamen may be established.

180. The commissioners for the reduction of the national debt, or the comptroller general acting under them, may, on the application and recommendation of the Board of Trade, establish savings banks at such ports and places within the United Kingdom, either in the mercantile marine offices established in such ports or elsewhere, as may appear to be expedient, and may appoint treasurers to receive from or on account of seamen, or the wives and families of seamen, desirous to become depositors in such savings banks, deposits to an amount not exceeding 150*l.* in the whole in respect of any one account, under such regulations as may be prescribed by the said commissioners or comptroller general; and such regulations shall be binding on all such treasurers and depositors; and the said commissioners may remove such treasurers, and appoint others in their place; and all the provisions of the Acts now in force relating to savings banks, except so far as relates to the annual amount

of deposit, shall apply to all savings banks which may be established under the authority of this Act, and to such treasurers and depositors as aforesaid. § 180.

18 & 19 Vict. c. 91, s. 17.—The enactment of the "Merchant Shipping Act, 1854," relating to savings banks shall apply to all seamen, and to their wives and families, whether such seamen belong to the Royal Navy or to the merchant service, or to any other sea service. Enactment concerning savings banks extended to seamen in the Navy.

"*The Seaman's Savings Bank Act*, 1856."

19 & 20 Vict. c. 41, s. 1.—The Board of Trade may establish in London a central savings bank for seamen, together with branch savings banks at such ports and places in the United Kingdom as they may think expedient, and they may receive at such banks deposits from or on account of seamen, or the wives, widows, and children of seamen, so, however, that the aggregate amount of deposit standing at any one time in the name of any one depositor shall not exceed two hundred pounds. Power to Board of Trade to establish savings banks for seamen.

19 & 20 Vict. c. 41, s. 2.—The Board of Trade may constitute any mercantile marine office established under the "Merchant Shipping Act, 1854," a branch savings bank for the purposes of this Act, and may require any superintendent belonging to such office to act as agent of the said board in carrying this Act into effect, and his duties as such agent shall thereupon be deemed to be part of his duties within the meaning of the "Merchant Shipping Act, 1854." Power to constitute mercantile marine offices branch savings banks.

19 & 20 Vict. c. 41, s. 3.—The commissioners for the reduction of the national debt may from time to time, on the request of the Board of Trade signified by writing by one of the secretaries or assistant secretaries of such board, receive from Her Majesty's Paymaster General the moneys received by the said board as deposits in savings banks established under this Act; and may also from time to time, on the like request signified in like manner, repay to Her Majesty's Paymaster General to the account of the said board the moneys so received by them as aforesaid; and the said commissioners shall invest all moneys so received by them as aforesaid in the same manner in which moneys received from trustees of savings banks are invested by them, and shall pay to Her Majesty's Paymaster General, to the account of the Board of Trade, interest upon the moneys so received by them as aforesaid so long as the same continue in their hands, at the same rate at which they pay interest for the time being upon the moneys received by them from the trustees of savings banks. Commissioners for Reduction of National Debt to receive deposits and pay interest.

19 & 20 Vict. c. 41, s. 4.—The Board of Trade may make and from time to time alter such regulations as they may think Board of Trade to make regu-

§ 180. fit with respect to the persons entitled to become depositors, to the making and withdrawal of deposits, the amount of deposits, the rate and payment of interest, the rights, claims, and obligations of depositors, and with respect to all other matters incidental to carrying this Act into execution; and all regulations so made shall be binding on the parties interested in the subject matter thereof to the same extent as if such regulations formed part of this Act; and no legal proceeding shall be instituted against the Board of Trade, or against any superintendent or other public officer employed on or about such savings banks, on account of any such regulations, or on account of any act done or left undone in pursuance thereof, or on account of any refusal, neglect, or omission to pay any deposit or interest thereon, unless such refusal, neglect, or omission arise from fraud or wilful misbehaviour on the part of the person against whom proceedings are instituted.

lations for conduct of savings banks.

Application of deposits of deceased depositor.

19 & 20 Vict. c. 41, s. 5.—All sums of money due from the Board of Trade to the estate of any deceased person entitled to any deposit in any savings bank established under this Act shall be paid and applied by such board to the same persons to whom and in the same manner and subject to the same conditions on and subject to which the money and effects of a deceased seaman are payable and applicable under the provisions of the "Merchant Shipping Act, 1854."

Punishment for forgery or for making false representations in order to obtain deposits or interest.

19 & 20 Vict. c. 41, s. 6.—Every person who, for the purpose of obtaining, either for himself or for another, any money deposited in any savings bank established under this Act, or any interest thereon, forges, assists in forging, or procures to be forged, or fraudulently alters, assists in fraudulently altering, or procures to be fraudulently altered, any document purporting to show or assist in showing a right to any such money or interest, and every person who for the purpose aforesaid makes use of any such forged or altered document as aforesaid, or who for the purpose aforesaid gives or makes, or procures to be given or made, or assists in giving or making or procuring to be given or made, any false evidence or representation, knowing the same to be false, shall on conviction be punishable with penal servitude for a term not exceeding four years, or with imprisonment, with or without hard labour, for any period not exceeding two years, or, if summarily prosecuted and convicted, by imprisonment, with or without hard labour, for any period not exceeding six months.

Expenses of Act how to be defrayed.

19 & 20 Vict. c. 41, s. 7.—The Board of Trade may, out of the interest paid by the commissioners for the reduction of the national debt on the moneys paid to them under this Act, pay any expenses incurred in carrying this Act into effect.

Accounts and copy of regulations to be laid before Parliament.

19 & 20 Vict. c. 41, s. 8.—An annual account of all deposits received and repaid by the Board of Trade under the authority of this Act, and of the interest thereon, shall be laid before

both Houses of Parliament; and a copy of all regulations made by this board under the authority of this Act shall likewise be laid before both Houses of Parliament.

Mode of criminal proceeding.

19 & 20 Vict. c. 41, s. 9.—All criminal proceedings under this Act shall be carried on in the same manner as similar proceedings under the "Merchant Shipping Act, 1854," and all rules of law, practice, and evidence which are applicable to such last-mentioned proceedings shall be applicable to criminal proceedings under this Act.

Seaman's Fund Winding-up Act.

By the Seaman's Fund Winding-up Act, 1851, 14 & 15 Vict. c. 101, the superintendence of the winding-up of this fund was given to the Board of Trade. By sec. 21, no master or seaman who had not contributed to the fund before 1851, is allowed to contribute to it, or claim any pension or relief from it.

Legal Rights to Wages.

Right to wages and provisions when to begin.

181. A seaman's right to wages and provisions shall be taken to commence either at the time at which he commences work, or at the time specified in the agreement for his commencement of work or presence on board, whichever first happens.

This means, that if the sailor goes on board, and commences work before the time that he agreed to commence, his right to wages dates from such actual commencement of work.

Wages.

When there is no question as to amount.

When there is no question as to the amount, payment is to be made as provided for in sec. 170, and in case of disputes, both parties may submit to have the question decided by the superintendent of a mercantile marine office (see sec. 173, p. 159).

When the whole of the wages are due.

Sickness.

Where the whole voyage is performed in the ordinary course, and the seaman has done his duty, it is needless to say that the full amount of the wages agreed upon must be paid. And if a seaman has been prevented from doing his duty, either by natural sickness, or from some hurt received in the performance of his duties during the voyage, he is entitled to the whole of his wages (*a*), unless the sickness is proved to be owing to his own neglect (*b*). And if a seaman refuses to work, but can prove that his refusal was caused by great misconduct on the part of the master (*c*), such as the provisions being through default of the master unreasonably insufficient or bad, he can still claim the whole of his wages (*d*).

Short provisions.

Interruption of voyage by embargo, &c.

When the vessel is detained abroad, by some foreign power laying an

(*a*) Abbott on Shipping (11th ed.), 480; *Chandler* v. *Grieves*, 2 H. Bl. 606, n.

(*b*) 30 & 31 Vict. c. 124, s. 8. See under s. 228, p. 201.

(*c*) *Train* v. *Bennett*, 3 C. & P. 3.

(*d*) *The Castilia*, 1 Hagg. Ad. 59; *The Eliza*, 1 Hagg. Ad. 186.

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embargo on her (*e*), or if she should be captured and then recaptured (*f*), or stranded (*g*), the seamen are entitled to wages during such interruption, unless they had agreed to perform the whole voyage for a fixed sum (*h*). Every payment of wages to a seaman is valid, notwithstanding any previous sale or assignment of such wages, or of any attachment or incumbrance on them (see sec. 233, p. 206). Suits for wages in the Admiralty Court must be brought within six years, or they are barred by 4 Anne, c. 16.

Limitation of suits.

When part of the Wages are due.

It often happens that a seaman is prevented from performing the whole of the service agreed upon, and this may arise either from his own acts, or without his default.

When non-performance is not due to the seaman.

Ship sold during voyage.

If a ship is sold in this country while she is on a voyage, the contract between the seamen and the original owner is at an end. If the seaman agreed for wages to be paid from time to time as the voyage proceeded, he is entitled to the amount due at the time when he first heard of the sale, or to the time when he first could leave the ship after hearing of the sale. But the original owner is not discharged from his obligations under the articles, if the seaman sustain damage by the change of ownership of the vessel (*i*).

Wreck or loss.

The contract of a sailor is also terminated by the wreck or loss of the ship, and when this occurs, he is entitled to wages for the time of service prior to such termination (see sec. 185, p. 170). But his claim to wages is barred if it is proved that he did not exert himself to the utmost to save the ship and cargo (see sec. 183, p. 169).

Illegal trading and voyages.

If the ship is seized for illegal trading, the sailors have a right to their wages up to the time of the seizure, provided they are in no way concerned in the illegal trading (*k*). And if the voyage becomes illegal by reason of war breaking out, no further wages can be claimed for continuing it (*l*). But no wages at all can be claimed if the whole voyage is illegal, it being a *turpis contractus* to agree to perform such a service (*m*).

Abandonment of voyage.

The abandonment of the voyage may dissolve the seaman's contract (*n*). And if it is abandoned, or the seaman is dismissed before it commences, or before he has earned a month's wages, he will be entitled

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(*e*) *Delamainer* v. *Winteringham*, 4 Camp. 186; *Pratt* v. *Cuff*, 4 East, 43n.; *Thompson* v. *Beale*, 1 Dow. 299.

(*f*) *Bergstrom* v. *Mills*, 3 Esp. 36; *Brown* v. *Lull*, 2 Sumner (Amer. Rep.), 442.

(*g*) *Forsboom* v. *Krugar*, 3 Camp. 197.

(*h*) Kay on Shipmasters, &c. I. 631; *Cutter* v. *Powell*, 2 S. L. C. (7th ed.), 1.

(*i*) *Robins* v. *Power*, 4 C. B. N. S. 787; 27 L. J. C. P. 257; Maclachlan on Shipping (2nd ed.), 221; *The Mary*, 1 Paine (Amer. Rep.), 180.

(*k*) *The Malta*, 2 Hagg. Ad. 158; *The St. Jago da Cuba*, 9 Wheat. (Amer. Rep.), 409

(*l*) *The Saratoga*, 2 Gall. (Amer. Rep.), 178.

(*m*) *The Vanguard*, 6 C. Rob. 207; *The Langdon Cheves*, 2 Mason (Amer. Rep.), 58.

(*n*) *The Warrior*, Lush. 476; *Campbell* v. *Steamer Uncle Sam*, 1 M'All, C. C. (Amer. Rep.), 77.

to compensation, in addition to the wages he may have earned up to that time (*o*).

If a seaman falls ill during a voyage, unless this is brought about by his own default, he is entitled to be cured at the owner's expense, and is not liable to any deductions from his wages (see sec. 228, p. 201). Illness.

If wrongfully dismissed during the voyage, he is entitled to the full amount of wages, deducting what he may earn on some other ship during the rest of the voyage (*p*). The death of a seaman during a voyage of course dissolves the contract of service, and the amount of wages due in such case appears never to have been decided in this country (*q*). But unless the agreement is for a fixed sum for the whole voyage, it seems most probable that the amount due is that earned up to the time of death (*r*). As to the mode of dealing with the wages and effects of deceased seamen, see secs. 194 to 202, p. 175 *et seq.* Death of seaman.

When the non-performance is due to the seaman.

This may be justifiable, or the result of misconduct on the part of the seaman. If during a voyage a seaman quits the ship, because the ship is sold (*s*), because the original voyage is deviated from (*t*), for the purpose of entering the royal navy (see sec. 214, p. 192), or if left behind with a certificate under sec. 205, such conduct is justifiable, and he is entitled to his wages up to the time he leaves the ship. A seaman's wages are liable to be diminished if he has represented himself as being different or superior to what he really is, either in skill or health (*u*); and on the other hand, if a post superior to his own is vacated during the voyage, and he in due course occupies it, and properly discharges the duties attached to it, he is entitled to the higher rate of wages (*x*). The amount due at the end of the voyage is diminished by the fines inflicted under this Act, and recorded in the official log book (see secs. 243, 244, p. 213, and as to forfeiture of wages, see sec. 171, p. 157). But if the sailor agrees to perform a certain voyage for a fixed sum, it would seem that the whole voyage must be performed before any part of the sum is due (*y*). A sailor's debts exceeding 5*s*., incurred after he has engaged to serve, are not recoverable until the service agreed for is concluded (see sec. 234, p. 207).

Justifiable non-performance.

Mis-representation of capacity.

Fines.

Indivisible contract.

Seamen's debts.

182. No seaman shall by any agreement forfeit his lien upon the ship, or be deprived of any remedy for the recovery

Seamen not to give up certain rights.

(*o*) See s. 177, p. 161; *The City of London*, 1 W. Rob. 92.

(*p*) *Robinet* v. *The Exeter*, 2 C. Rob. Ad. 261; *The Elizabeth*, 2 Dods. Ad. 405.

(*q*) Maclachlan on Shipping (2nd ed.), 220. The American decisions are conflicting on this point, see *Walton* v. *The Neptune*, 1 Pet. Ad. (Amer. Rep.), 142; *Jackson* v. *Sims*, 1 Pet. Ad. (Amer. Rep.), 157.

(*r*) *Cutter* v. *Powell*, 2 S. L. C. (7th ed.),1, and cases there collected.

(*s*) *Robins* v. *Power*, 4 C. B. N. S. 787; 27 L. J. C. P. 257.

(*t*) *The Cambridge*, 2 Hagg. Ad. 243.

(*u*) *The Beaver*, 3 C. Rob. 92; *Atkins* v. *Burrows*, 1 Pet. Ad. (Amer. Rep.), 247; *The Orozimbo*, ibid. 250.

(*x*) *The Providence*, 1 Hagg. Ad. 391; *Hanson* v. *Royden*, L. R. 3 C. P. 47: 3 Mar. Law Cas. 8.

(*y*) *Cutter* v. *Powell*, 6 T. R. 320; 2 S. L. C. (7th ed.) 1, and cases there cited; *Robins* v. *Power*, 4 C. B. N. S. 787; Maclachlan on Shipping (2nd ed.), 226.

§ 182. of his wages to which he would otherwise have been entitled; and every stipulation in any agreement inconsistent with any provision of this Act, and every stipulation by which any seaman consents to abandon his right to wages in the case of the loss of the ship, or to abandon any right which he may have or obtain in the nature of salvage, shall be wholly inoperative.

This section only prevents masters and seamen from making such contracts, or such stipulations as are expressly stated to be void (*z*). They may make any other agreements they please, provided they are not inequitable. An American seaman who had frequently asked for his wages, but had failed to get them, at length, being in distress, signed a release, accepting one third of the proper amount. This agreement was set aside by the American Court, as being a *nudum pactum* (*a*). See sec. 149, p. 130, as to what particulars agreements with seamen should contain. Agreements to serve in fishing vessels employed on the coasts of the United Kingdom are exempt from this section (see Ibid.).

Construction of sect. 182 of principal Act. Stipulations concerning salvage.

25 & 26 Vict. c. 63, s. 18.—It is hereby declared that the 182nd section of the principal Act does not apply to the case of any stipulation made by the seamen belonging to any ship, which according to the terms of the agreement is to be employed on salvage service, with respect to the remuneration to be paid to them for salvage services to be rendered by such ship to any other ship or ships.

Burden of proof.

Such an agreement need not be in writing, but it falls upon those who dispute the seamen's claim to salvage, to show that there was an agreement that the vessel was to be employed on salvage service, and also that a stipulation was made that the seamen should waive their right to salvage money (*b*).

This section of the Merchant Shipping Act, 1862, has had the effect of making the kind of agreements it provides for not invalid, thus placing them on the same footing on which they stood before there was any legislation on the subject. But the discretion of the Court of Admiralty is not thereby fettered, and if the agreement appears inequitable, it will not be upheld (*c*). It is not meant by this that every crew engaged expressly to perform salvage services shall thereby renounce their right to salvage remuneration; the question is, whether they entered knowingly and willingly, with their eyes open, into a stipulation to give up and abandon altogether, all claim to salvage remuneration; for seamen must be aware of what stipulations they enter into (*d*). As to salvage generally, see sec. 458, p. 379 *et seq.*

Inequitable agreement will be set aside.

Lien for salvage must be expressly renounced.

(*z*) *Button* v. *Thompson*, L. R. 4 C. P. 340.
(*a*) *Savin* v. *The Juno*, 1 Woods (Amer. Rep.), 300.
(*b*) *The Pride of Canada*, Br. & L. 208; 1 Mar. Law Cas. 406.
(*c*) *The Ganges*, L. R. 2 A. & E. 370; 3 Mar. Law Cas. 342.
(*d*) *The Pride of Canada*, 1 Mar. Law Cas. 406.

The Seaman's lien for Wages.

§§ 182-184.

Seamen have a threefold remedy for their wages: they may proceed against the ship, the owners, and the master (*e*). By the general Maritime Law, the ship is the primary security to the mariner (*f*), and his lien extends over the whole ship, so that if a part is separated by a storm, and is afterwards recovered, it is still subject to the seaman's lien (*g*), which continues as long as a plank remains (*h*). When the ship is wholly lost, but insured, the sailor can claim his wages out of the insurance money (*i*). This lien extends to the freight (*k*). A seaman or master, by proceeding at law for his wages, does not preclude himself from enforcing his claim *in rem*. Even if he has obtained a judgment, which proves fruitless through the owner's bankruptcy, he may still sue the ship (*l*). See Part IX., p. 417, as to Maritime liens generally.

Three remedies for wages.

183. No right to wages shall be dependent on the earning of freight; and every seaman and apprentice who would be entitled to demand and recover any wages if the ship in which he has served had earned freight, shall, subject to all other rules of law and conditions applicable to the case, be entitled to claim and recover the same, notwithstanding that freight has not been earned; but in all cases of wreck or loss of the ship, proof that he has not exerted himself to the utmost to save the ship, cargo, and stores, shall bar his claim.

Wages not to be dependent on the earning of freight.

This section abolished the old rule that "freight is the mother of wages." Before this enactment, unless freight was earned, the sailor could claim no wages at all, although the Courts strained their powers to the utmost to prevent such injustice (*ll*).

184. If any seaman or apprentice to whom wages are due under the last preceding enactment dies before the same are paid, they shall be paid and applied in the manner hereinafter specified with regard to the wages of seamen who die during a voyage.

In case of death, such wages to be paid as after mentioned.

See sec. 194, p. 175 *et seq*, as to seamen dying on a voyage.

(*e*) Abbott on Shipping (5th ed.), 475.
(*f*) *The Golubchick*, 1 W. Rob. 143.
(*g*) *The Neptune*, 1 Hagg. 238.
(*h*) *The Madonna d'Idra*, 1 Dods. Ad. 40; *The Dawn*, Davies (Amer. Rep.), 121.
(*i*) *In re Dawson*, 17 L. T. 100 (Bkcy. Court).
(*k*) *The Mary Ann*, 9 Jur. 94; *Poland* v. *The Spartan*, Ware (Amer. Rep.), 134.
(*l*) Williams and Bruce, Admiralty Practice, 177; *The Bengal*, Swa. 468 *Nelson* v. *Couch*, 33 L. J. C. P. 46; *The Sylph*, L. R. 2 A. & E. 24.
(*ll*) *The Minerva*, 1 Hagg. Ad. 347; *The Juliana*, 2 Dods. Ad. 504.

Termination of service by wreck or illness.

In cases where the service of any seaman terminates before the period contemplated in the agreement by reason of the wreck or loss of the ship, and also in cases where such service terminates before such period as aforesaid, by reason of his being left on shore at any place abroad under a certificate of his unfitness or inability to proceed on the voyage granted as hereinafter mentioned, such seaman shall be entitled to wages for the time of service prior to such termination as aforesaid, but not for any further period.

But his claim is barred if he has not exerted himself to the utmost to save the ship and cargo (see sec. 183, p. 169).

The loss of the ship would seem to include the case of capture (*m*). (See sec. 181, p. 165, as to what wages are due in case of wreck or loss.) With respect to leaving seamen abroad, and the certificates to be given in such case, see sec. 205, p. 183.

Wages not to accrue during refusal to work or imprisonment.

186. No seaman or apprentice shall be entitled to wages for any period during which he unlawfully refuses or neglects to work when required, whether before or after the time fixed by the agreement for his beginning work, nor, unless the court hearing the case otherwise directs, for any period during which he is lawfully imprisoned for any offence committed by him.

Period within which wages are to be paid.

187. The master or owner of every ship shall pay to every seaman his wages within the respective periods following; (that is to say,) in the case of a home trade ship within two days after the termination of the agreement or at the time when such seaman is discharged, whichever first happens; and in the case of all other ships (except ships employed in the southern whale fishery or on other voyages for which seamen by the terms of their agreement are wholly compensated by shares in the profits of the adventure) within three days after the cargo has been delivered, or within five days after the seaman's discharge, whichever first happens; and in all cases the seaman shall at the time of his discharge be entitled to be paid on account a sum equal to one-fourth part of the balance due to him; and every master or owner who neglects or refuses to make payment in manner aforesaid, without sufficient cause, shall pay to the seaman a sum not exceeding the amount of two days' pay for each of the days, not exceeding ten days, during which payment is delayed beyond the respec-

(*m*) Kay on Shipmasters, &c., i. 637; Maclachlan on Shipping (2nd ed.) 222.

tive periods aforesaid, and such sum shall be recoverable as wages.

If there is a dispute as to the amount of the wages, the owner will be exempt from the penalty if he offers what he considers the proper sum due, even though the seaman refuses to accept such offer (*n*). As to the master's right to ten days' double pay if his own wages are not paid, see sec. 191, p. 172. As to the settlement of disputes respecting wages, see sec. 173, p. 159.

When seamen engaged in the south whale fishery, stipulate for a share in the profit of the voyage or adventure, no partnership is thereby created, and the share they obtain is a reward in the nature of wages, and is governed by the same rules (*o*). Share in profits of voyage.

Mode of Recovering Wages.

188. Any seaman or apprentice, or any person duly authorised on his behalf, may sue in a summary manner before any two justices of the peace acting in or near to the place at which the service has terminated, or at which the seaman or apprentice has been discharged, or at which any person upon whom the claim is made is or resides, or in Scotland either before any such justices or before the sheriff of the county within which any such place is situated, for any amount of wages due to such seaman or apprentice not exceeding 50*l.* over and above the costs of any proceeding for the recovery thereof, so soon as the same becomes payable; and every order made by such justices or sheriff in the matter shall be final. Seamen may sue for wages in a summary manner.

189. No suit or proceeding for the recovery of wages under the sum of 50*l.* shall be instituted by or on behalf of any seaman or apprentice in any court of admiralty or vice-admiralty, or in the Court of Session in Scotland, or in any superior court of record in Her Majesty's dominions, unless the owner of the ship is adjudged bankrupt or declared insolvent, or unless the ship is under arrest or is sold by the authority of any such court as aforesaid, or unless any justices acting under the authority of this Act refer the case to be adjudged by such court, or unless neither the owner nor master is or resides within twenty miles of the place the seaman or apprentice is discharged or put ashore. Restrictions on suits for wages in superior courts.

This section also applies to masters (*p*), but a master must furnish his Masters included.

(*n*) *Frazer* v. *Hutton*, 2 C. B. N. S. 512.

(*o*) *Perrott* v. *Bryant*, 2 Y. & C. 61; *Mair* v. *Glennie*, 4 M. & S. 240; *The Frederick*, 5 C. Rob. 8; *Coffin* v. *Jenkins*, 3 Story (Amer. Rep.), 119.

(*p*) *The Blakeney*, Swa. 428, and see s. 191, p. 172.

§§ 189-191.

Admiralty Court.

County Courts.

Sum claimed.

accounts before bringing his suit, otherwise costs will not be allowed him (*q*). By the Admiralty Court Act, 1861 (*r*), jurisdiction was given to that Court over any claim by a seaman for wages earned on board his ship, and over any claim by the master for wages and disbursements. But costs are not to be allowed unless the plaintiff recovers more than 50*l*. By the County Courts Admiralty Jurisdiction Act, 1868 (*s*), any county court having admiralty jurisdiction, may try and determine any claim for wages in which the amount claimed does not exceed 150*l*. And if a seaman sues in a superior court, when he might have taken proceedings in a county court, he is liable to be condemned in costs (*t*) (see sec. 543, p. 453). In cases of salvage, the "amount claimed" means a claim made before any legal proceedings have been commenced (*x*). See Part X., p. 451, as to the County Courts Admiralty Jurisdiction.

No seaman to sue for wages abroad, except in cases of discharge or of danger to life.

190. No seaman who is engaged for a voyage or engagement which is to terminate in the United Kingdom shall be entitled to sue in any court abroad for wages, unless he is discharged with such sanction as herein required, and with the written consent of the master, or proves such ill-usage on the part of the master, or by his authority, as to warrant reasonable apprehension of danger to the life of such seaman if he were to remain on board; but if any seaman on his return to the United Kingdom proves that the master or owner has been guilty of any conduct or default which but for this enactment would have entitled the seaman to sue for wages before the termination of the voyage or engagement, he shall be entitled to recover in addition to his wages such compensation not exceeding 20*l*. as the court hearing the case thinks reasonable.

With regard to leaving seamen abroad, see sec. 205, p. 183 *et seq.*

Master to have same remedies for wages as seamen.

191. Every master of a ship shall, so far as the case permits, have the same rights, liens, and remedies for the recovery of his wages which by this Act or by any law or custom any seaman, not being a master, has for the recovery of his wages; and if in any proceeding in any court of admiralty or vice-admiralty touching the claim of a master to wages any right of set-off or counter-claim is set up, it shall be lawful for such court to enter into and adjudicate upon all questions, and to settle all accounts then arising or outstanding and unsettled

(*q*) *The Fleur-de-Lis*, L. R. 1 A. & E. 49.
(*r*) 24 Vict. c. 10, s. 10.
(*s*) 31 & 32 Vict. c. 71, s. 3, subs. (2)
(*t*) 31 & 32 Vict. c. 71, s. 9.
(*x*) *The William and John*, Br. & L. 49; 1 Mar. Law Cas. 311.

between the parties to the proceeding, and to direct payment of any balance which is found to be due. **§ 191.**

His right to ten days' double pay conditional.

"If it were not," said Dr. Lushington, "for the words *so far as the case permits*, there could be no doubt that when the payment of a master's wages is delayed, he would have the same right to ten days' double pay as seamen have (see sec. 187, p. 170), although the master is in many respects less in need of the protection of parliament than the seaman. It has, however, been decided that by virtue of this section, masters have in such case a right to extra pay, but a right which may be forfeited if the circumstances of the case show that the granting such claim would be unjust and inequitable. As for instance, if the delay in payment has been occasioned by the master's own neglect or misfeasance in improperly withholding the accounts" (*z*).

Master's accounts.

The true construction of the statute requires that the general account, if opened at all, must be gone through, and a balance made; and the accounts mentioned in this section are the accounts between the master and the ship, exclusive of any private account between the master and the owners for merely extraneous purposes (*a*). If he does not furnish his accounts before suing for wages, he will not be entitled to costs (*b*).

The Master's Wages and Disbursements.

He has a lien for wages and disbursements.

The master has a maritime lien on the ship for his wages, and it is now decided that sec. 10 of the Admiralty Court Act, 1861, has given him a maritime lien in respect of his disbursements for the ship (*c*). Hence, a master's claim in such matters is preferred to that of a mortgagee, even if the master is himself a part-owner of the vessel (*d*).

Disbursements.

Disbursements include all proper expenditure made by him upon the ship, whether the particular articles be obtained by immediate or promised payment (*e*).

If the master sleeps on shore.

The master's wages may be forfeited under certain circumstances (see sec. 171, p. 157, as to the forfeiture of wages generally). But he will be entitled to his wages "as earned on board the ship" if he performed all the duties of master, although during his service he did not sleep on board, and many of his duties were performed on shore (*f*).

Illness.

Sudden ill health, even though it compel him to quit the ship, will not deprive the master of his wages (*g*).

Foreign masters.

Section 191 applies to foreign masters, as there are no words in sec. 109 showing that this should not extend to foreigners (*h*); but the jurisdiction of the Court of Admiralty over foreigners is discretionary (*i*).

(*z*) *The Princess Helena*, Lush, 190.
(*a*) *The Gentanner*, Swa. 422; *The Daring*, L. R. 2 Ad. E. 264.
(*b*) *The Fleur-de-Lis*, L. R. 1 A. & E. 49.
(*c*) *The Mary Ann*, L. R. 1 A. & E. 8; *The Panthea*, 25 L. T. N. S. 389.
(*d*) *The Feronia*, L. R. 2 A. & E. 65; 3 Mar. Law Cas. 54.
(*e*) *The Mary Ann*, L. R. 1 A. & E. 8.
(*f*) *The Chieftain*, 32 L. J. Ad. 106.
(*g*) *The Rajah of Cochin*, Swa. 437.
(*h*) *The Milford*, Swa. 367.
(*i*) *The Herzogin Marie*, Lush. 292.

§§ 191–193

Application of this part of Act.

This part of the Act, relating to wages, and the remedies for their recovery, applies to all ships registered in any of Her Majesty's dominions abroad, when such ships are out of the jurisdiction of their respective governments (see sec. 109, p. 106). Thus, a master has the same rights under this section in a Vice Admiralty Court as he has in this country, whatever the municipal law of the colony or possession may be (*k*).

Relief to Seamen's Families out of Poor Rates.

Relief to seamen's families to be chargeable on a certain proportion of their wages.

192. Whenever during the absence of any seaman on a voyage his wife, children, and step-children, or any of them, become or becomes chargeable to any union or parish in the United Kingdom, such union or parish shall be entitled to be reimbursed out of the wages of such seaman earned during such voyage any sums properly expended during his absence in the maintenance of his said relations, or any of them, so that such sums do not exceed the following proportions of his said wages; (that is to say,)

(1.) If only one of such relations is chargeable, one half of such wages:

(2.) If two or more such relations are chargeable, two-thirds of such wages:

But if during the absence of the seaman any sums have been paid by the owner to or on behalf of any such relation as aforesaid, under an allotment note given by the seaman in his, her, or their favour, any such claim for reimbursement as aforesaid shall be limited to the excess (if any) of the proportion of the wages hereinbefore mentioned over the sums so paid.

For instance, suppose one relation becomes chargeable, and the seaman has already allotted one fourth of his wages in favour of that relation, the union can then only claim one-fourth as reimbursement.

Notice to be given to owner, and charge to be enforced on the return of the seaman.

193. For the purpose of obtaining such reimbursement as aforesaid, the guardians of the union or parish, where the relief of the poor is administered by guardians, and the overseers of the poor of any other parish in England, and the guardians or other persons having the authority of guardians in any union in Ireland, and the inspector of the poor in Scotland, may give to the owner of the ship in which the seaman is serving a notice in writing stating the proportion of the seaman's wages upon which it is intended to make the

(*k*) *The Rajah of Cochin*, Swa. 476.

claim, and requiring the owner to retain such proportion in his hands for a period to be therein mentioned, not exceeding twenty-one days from the time of the seaman's return to his port of discharge, and also requiring such owner immediately on such return to give to such guardians, overseers, persons, or inspector notice in writing of such return; and such owner, after receiving such notice as aforesaid, shall be bound to retain the said proportion of wages, and to give notice of the seaman's return accordingly, and shall likewise give to the seaman notice of the intended claim; and the said guardians, overseers, persons, or inspector may upon the seaman's return apply in a summary way in England or Ireland to any two justices having jurisdiction in such union or parish as aforesaid, and in Scotland to the sheriff of the county, for an order for such reimbursement as aforesaid; and such justices or sheriff may hear the case and may make an order for such reimbursement to the whole extent aforesaid, or to such lesser amount as they or he may under the circumstances think fit; and the owner shall pay to such guardians, overseers, persons or inspector, out of the seaman's wages, the amount so ordered to be paid by way of reimbursement, and shall pay the remainder of the said wages to the seaman; and if no such order as aforesaid is obtained within the period mentioned in the notice so to be given to the owner as aforesaid, the proportion of wages so to be retained by him as aforesaid shall immediately on the expiration of such period, and without deduction, be payable to the seaman.

Wages and Effects of deceased Seamen.

Masters to take charge of or sell effects of deceased seamen which are on board, and enter the same and wages due in the official log.

194. Whenever any seaman or apprentice belonging to or sent home in any British ship, whether a foreign-going ship or a home trade ship, employed on a voyage which is to terminate in the United Kingdom, dies during such voyage, the master shall take charge of all money, clothes, and effects which he leaves on board, and shall, if he thinks fit, cause all or any of the said clothes and effects to be sold by auction at the mast or other public auction, and shall thereupon sign an entry in the official log book containing the following particulars; (that is to say,)

(1.) A statement of the amount of the money and a description of the effects so left by the deceased:

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(2.) In case of a sale, a description of each article sold, and the sum received for each:

(3.) A statement of the sum due to the deceased as wages, and the total amount of the deductions (if any) to be made therefrom:

And shall cause such entry to be attested by a mate and by one of the crew.

Such effects and wages to be paid either to consul or to superintendent, with full accounts.

195. In the cases provided for by the last preceding section, the following rules shall be observed; (that is to say,)

(1.) If the ship proceeds at once to any port in the United Kingdom without touching on the way at any foreign port, the master shall within forty-eight hours after his arrival deliver any such effects as aforesaid remaining unsold, and pay any money which he has taken charge of or received from such sale as aforesaid, and also the balance of wages due to the deceased, to the superintendent of the mercantile marine office at the port of destination in the United Kingdom:

If ship touches at a foreign port, master shall deliver up wages and effects,

(2.) If the ship touches and remains for forty-eight hours at some foreign port or at some port in Her Majesty's dominions abroad before coming to any port in the United Kingdom, the master shall report the case to the British consular officer or officer of customs there, as the case may be, and shall give to such officer any information he requires as to the destination of the ship and probable length of the voyage; and such officer may thereupon, if he considers it expedient so to do, require the said effects, money, and wages to be delivered and paid to him, and shall upon such delivery and payment give to the master a receipt, and the master shall within forty-eight hours after his arrival at his port of destination in the United Kingdom produce the same to the superintendent of the mercantile marine office there; and such consular officer or officer of customs shall in such case indorse and certify upon the agreement with the crew such particulars with respect to such delivery and payment as the Board of Trade requires:

unless not required to do so.

(3.) If such officer as aforesaid does not require such payment and delivery to be made to him, the master shall take charge of the said effects, money, and wages, and

shall within forty-eight hours after his arrival at his port of destination in the United Kingdom deliver and pay the same to the superintendent of the mercantile marine office there :

Account of wages, &c., to be given to Board of Trade.

(4.) The master shall in all cases in which any seaman or apprentice dies during the progress of a voyage or engagement give to the Board of Trade, or to such officer or superintendent as aforesaid, an account in such form as they respectively require of the effects, money, and wages so to be delivered and paid ; and no deductions claimed in such account shall be allowed unless verified, if there is any official log book, by such entry therein as hereinbefore required, and also by such other vouchers (if any) as may be reasonably required by the Board of Trade, or by the officer or superintendent to whom the account is rendered :

Certificate.

(5.) Upon due compliance with such of the provisions of this section as relate to acts to be done at the port of destination in the United Kingdom, the superintendent shall grant to the master a certificate to that effect, and no officer of customs shall clear inwards any foreign-going ship without the production of such certificate.

Penalties for not taking charge of, remitting, or accounting for such monies and effects.

196. If any master fails to take such charge of the money or other effects of a seaman or apprentice dying during a voyage, or to make such entries in respect thereof, or to procure such attestation to such entries, or to make such payment or delivery of any money, wages, or effects of any seaman or apprentice dying during a voyage, or to give such account in respect thereof as hereinbefore respectively directed, he shall be accountable for the money, wages, and effects of the seaman or apprentice to the Board of Trade, and shall pay and deliver the same accordingly ; and such master shall in addition for every such offence incur a penalty not exceeding treble the value of the money or effects not accounted for, or if such value is not ascertained, not exceeding 50*l.* ; and if any such money, wages, or effects are not duly paid, delivered or accounted for by the master, the owner of the ship shall pay, deliver, and account for the same, and such money and wages and the value of such effects shall be recoverable from him accordingly ; and if he fails to account for and pay the same, he shall, in addition to his liability for the said money and

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value, incur the same penalty which is hereinbefore me as incurred by the master for the like offence; and all wages, and effects of any seaman or apprentice dying during a voyage shall be recoverable in the same courts and by the same modes of proceeding by which seamen are hereby enabled to recover wages due to them.

Officers of customs and consuls to take charge of effects left by seamen abroad, and to remit the same and their wages to Board of Trade.

197. If any such seaman or apprentice as last aforesaid dies abroad at any place either in or out of Her Majesty's dominions leaving any money or effects not on board his ship, the chief officer of customs or the British consular officer at or nearest to the place, as the case may be, shall claim and take charge of such money and effects; and such officer shall, if he thinks fit, sell all or any of such effects, or any effects of any deceased seaman or apprentice delivered to him under the provisions hereinbefore contained, and every such officer shall, quarterly or at such other times as the Board of Trade directs, remit to Her Majesty's Paymaster General all moneys belonging to or arising from the sale of the effects of or paid as the wages of any deceased seamen or apprentices which have come to his hands under the provisions hereinbefore contained, and shall render such accounts in respect thereof as the Board of Trade requires.

Wages and effects of deceased seamen.

25 & 26 Vict. c. 63, s. 20.—The 197th section of the Principal Act shall extend to seamen or apprentices who within the six months immediately preceding their death have belonged to a British ship; and such section shall be construed as if there were inserted in the first line thereof, after the words "such seaman or apprentice as last aforesaid," the words "or if any seaman or apprentice who has within the six months immediately preceding his death belonged to a British ship."

Recovery of wages, &c. of seamen lost with their ship.

25 & 26 Vict. c. 63, s. 21.—The wages of seamen or apprentices who are lost with the ship to which they belong shall be dealt with as follows; (that is to say,)

(1.) The Board of Trade may recover the same from the owner of the ship in the same manner in which seamen's wages are recoverable:

Ship not heard of for twelve months deemed lost.

(2.) In any proceedings for the recovery of such wages, if it is shown by some official return produced out of the custody of the Registrar General of Shipping and Seamen, or by other evidence that the ship has twelve months or upwards before the institution of the proceeding left a port of departure, and if it is not shown that she has been heard of within twelve months after

such departure, she shall be deemed to have been lost with all hands on board, either immediately after the time she was last heard of, or at such later time as the Court hearing the case may think probable :

List of crew evidence.

(3.) The production out of the custody of the Registrar General of Shipping and Seamen or of the Board of Trade of any duplicate agreement or list of the crew made out at the time of the last departure of the ship from the United Kingdom, or of a certificate purporting to be a certificate from a consular or other public officer at any port or road, stating that certain seamen or apprentices were shipped in the ship from the said port, shall, in the absence of proof to the contrary, be sufficient proof that the seamen or apprentices therein named were on board at the time of the loss :

How wages to be dealt with.

(4.) The Board of Trade shall deal with such wages in the manner in which they deal with the wages of other deceased seamen and apprentices under the Principal Act.

Wages and effects of seamen dying at home to be paid in certain cases to Board of Trade.

198. Whenever any seaman or apprentice dies in the United Kingdom, and is at the time of his death entitled to claim from the master or owner of any ship in which he has served any unpaid wages or effects, such master or owner shall pay and deliver or account for the same to the superintendent of a mercantile marine office at the port where the seaman or apprentice was discharged or was to have been discharged, or to the Board of Trade, or as it directs.

If less than 50*l.* wages and property of deceased seamen may be paid over without probate or administration to the persons entitled.

199. If the money and effects of any deceased seaman or apprentice paid, delivered, or remitted to the Board of Trade or its agents, including the monies received for any part of the said effects which have been sold either before delivery to the Board of Trade or by its direction, do not exceed in value the sum of 50*l.*, then, subject to the provisions hereinafter contained, and to all such deductions for expenses incurred in respect of the seaman or apprentice or of his said money and effects as the said board thinks proper to allow, the said board may, if it thinks fit so to do, pay and deliver the said money and effects either to any claimants who can prove themselves to the satisfaction of the said board either to be his widow or children, or to be entitled to the effects of the deceased under his will (if any), or under the statutes for the distribution of the effects of intestates, or under any other statute, or at common law, or to be entitled to procure probate or take out

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letters of administration or confirmation, alt'
or letters of administration or confirmatio
out, and shall be thereby discharged from
in respect of the money and effects so pa
may, if he thinks fit so to do, require pr.
administration or confirmation to be taken out, a.
pay and deliver the said money and effects to the leg.
representatives of the deceased; and all claimants to w.
such money or effects are so paid or delivered shall apply the
same in due course of administration; and if such money and effects exceed in value the sum of 50*l.*, then, subject to the provisions hereinafter contained and to deduction for expenses, the Board of Trade shall pay and deliver the same to the legal personal representatives of the deceased.

Seamen's Wills.

Mode of payment under wills made by seamen.

200. In cases where the deceased seaman or apprentice has left a will, the Board of Trade shall have the following powers; (that is to say,)

Board may refuse payment if will is not in writing.

(1.) It may in its discretion refuse to pay or deliver any such wages or effects as aforesaid to any person claiming to be entitled thereto under a will made on board ship unless such will is in writing, and is signed or acknowledged by the testator in the presence of the master or first or only mate of the ship, and is attested by such master or mate:

If will is not made on board ship.

(2.) It may in its discretion refuse to pay or deliver any such wages or effects as aforesaid to any person not being related to the testator by blood or marriage who claims to be entitled thereto under a will made elsewhere than on board ship, unless such will is in writing, and is signed or acknowledged by the testator in the presence of two witnesses, one of whom is some superintendent of a mercantile marine office appointed under this Act, or some minister or officiating minister or curate of the place in which the same is made, or, in a place where there are no such persons, some justice of the peace, or some British consular officer, or some officer of customs, and is attested by such witnesses:

If claim is rejected.

Whenever any claim made under a will is rejected by the

Board of Trade on account of the said will not being made and attested as hereinbefore required, the wages and effects of the deceased shall be dealt with as if no will had been made.

Creditors of Deceased Seamen.

Provision for payment of just claims by creditors, and for preventing fraudulent claims.

201. The following rules shall be observed with respect to creditors of deceased seamen and apprentices; (that is to say,)

(1.) No such creditor shall be entitled to claim from the Board of Trade the wages or effects of any such seaman or apprentice or any part thereof by virtue of letters of administration taken out by him, or by virtue of confirmation in Scotland as executor creditor:

Three years' limitation.

(2.) No such creditor shall be entitled by any means whatever to payment of his debt out of such wages and effects, if the debt accrued more than three years before the death of the deceased, or if the demand is not made within two years after such death:

Account of debt in writing.

(3.) Subject as aforesaid, the steps to be taken for procuring payment of such debt shall be as follows (that is to say): every person making a demand as creditor shall deliver to the Board of Trade an account in writing in such form as it requires, subscribed with his name, stating the particulars of his demand and the place of his abode, and verified by his declaration made before a justice:

Notice of other claims allowed.

(4.) If before such demand is made any claim to the wages and effects of the deceased made by any person interested therein, as his widow or child, or under a will or under the statutes for the distribution of the effects of intestates, or under any other statute, or at common law, has been allowed, the Board of Trade shall give notice to the creditor of the allowance of such person's claim, and the creditor shall thereupon have the same rights and remedies against such person as if he or she had received the said wages and effects as the legal personal representative of the deceased:

Proofs of claim.

(5.) If no claim by any such person has been allowed, the Board of Trade shall proceed to investigate the creditor's account, and may for that purpose require him to prove the same, and to produce all books, accounts, vouchers,

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and papers relating thereto ; and if by such means the creditor duly satisfies the Board of Trade of the justice of the demand, either in the whole or in part, the same shall be allowed and paid accordingly, so far as the assets in the hands of the Board of Trade will extend for that purpose, and such payment shall discharge the Board of Trade from all further liability in respect of the money so paid ; but if such board is not so satisfied, or if such books, accounts, vouchers, or papers as aforesaid are not produced, and no sufficient reason is assigned for not producing them, the demand shall be disallowed :

Delay of one year in investigation of claim if necessary.

(6.) In any case whatever the Board of Trade may delay the investigation of any demand made by a creditor for the payment of his debt for one year from the time of the first delivery of the demand ; and if in the course of that time a claim to the wages and effects of the deceased is made and substantiated as hereinbefore required by any person interested therein as a widow or child, or under a will, or under the statutes for the distribution of the effects of intestates, or under any other statute, or at common law, the Board of Trade may pay and deliver the same to such person ; and thereupon the creditor shall have the same rights and remedies against such person as if he or she had received the same as the legal representative of the deceased.

Mode of dealing with unclaimed wages of deceased seamen.

202. In cases of wages or effects of deceased seamen or apprentices received by the Board of Trade to which no claim is substantiated within six years after the receipt thereof by such board, it shall be in the absolute discretion of such board, if any subsequent claim is made, either to allow or to refuse the same ; and, subject to the provision hereinafter contained, the Board of Trade shall from time to time pay any monies arising from the unclaimed wages and effects of deceased seamen, which in the opinion of such board it is not necessary to retain for the purpose of satisfying claims, into the receipt of Her Majesty's Exchequer in such manner as the Treasury directs, and such monies shall be carried to and form part of the Consolidated Fund of the United Kingdom.

Punishment for forgery and

203. Every person who, for the purpose of obtaining, either

for himself or for another, any money or effects of any deceased seaman or apprentice, forges, assists in forging, or procures to be forged, or fraudulently alters, assists in fraudulently altering, or procures to be fraudulently altered, any document purporting to show or assist in showing a right to such wages or effects, and every person who for the purpose aforesaid makes use of any such forged or altered document as aforesaid, or who for the purpose aforesaid gives or makes, or procures to be given or made, any false evidence or representation, knowing the same to be false, shall be punishable with penal servitude for a term not exceeding *five* years, or with imprisonment with or without hard labour for any period not exceeding two years, or if summarily prosecuted and convicted, by imprisonment, with or without hard labour, for any period not exceeding six months.

False representations in order to obtain wages and property of deceased seamen.

The term of penal servitude was originally four years, but now, by 27 & 28 Vict. c. 47, s. 2, no one can be committed to penal servitude for less than five years.

204. In the case of seamen invalided or discharged from any of Her Majesty's ships, and sent home in merchant ships, any monies or effects belonging to them which are paid, remitted, or delivered to the Board of Trade, or its agents, under the provisions hereinbefore contained, shall be paid over and disposed of in such manner as the Accountant-General of Her Majesty's navy directs.

Effects of seamen discharged from navy to be disposed of by Accountant-General of Navy.

Leaving Seamen Abroad.

205. Whenever any British ship is transferred or disposed of at any place out of Her Majesty's dominions, and any seaman or apprentice belonging thereto does not in the presence of some British consular officer, or, if there is no such consular officer there, in the presence of one or more respectable British merchants residing at the place, and not interested in the said ship, signify his consent in writing to complete the voyage if continued, and whenever the service of any seaman or apprentice belonging to any British ship terminates at any place out of Her Majesty's dominions, the master shall give to each such seaman or apprentice a certificate of discharge in the form sanctioned by the Board of Trade as aforesaid, and in the case of any certificated mate whose certificate he has retained shall

On discharge of seamen abroad, by sale of ship or otherwise, certificates of discharge to be given, and seamen to be sent home at expense of owner.

§ 205. return such certificate to him, and shall also, besides paying the wages to which such seaman or apprentice is entitled, either provide him with adequate employment on board some other British ship bound to the port in Her Majesty's dominions at which he was originally shipped, or to such other port in the United Kingdom as is agreed upon by him, or furnish the means of sending him back to such port, or provide him with a passage home, or deposit with such consular officer, or such merchant or merchants as aforesaid, such a sum of money as is by such officer or merchants deemed sufficient to defray the expenses of his subsistence and passage home; and such consular officer or merchants shall indorse upon the agreement of the ship which the seaman or apprentice is leaving the particulars of such payment, provision, or deposit; and if the master refuses or neglects to comply with the requirements of this section such expenses as last aforesaid, if defrayed by such consular officer or by any other person, shall, unless such seaman or apprentice has been guilty of barratry, be a charge upon the ship to which such seaman or apprentice belonged and upon the owner for the time being thereof, and may be recovered against such owners, with costs, at the suit of the consular officer or other person defraying such expenses, or, in case the same has been allowed to the consular officer out of the public monies, as a debt due to Her Majesty, either by ordinary process of law, or in the manner in which seamen are hereby enabled to recover wages; and such expenses, if defrayed by the seaman or apprentice, shall be recoverable as wages due to him.

See sec. 181, p. 165 *et seq*, as to wages, and sec. 188, p. 171, as to the mode of recovering wages.

(E.) CERTIFICATE OF DISCHARGE, FOR SEAMEN NOT DISCHARGED BEFORE A SUPERINTENDENT OF A MERCANTILE MARINE OFFICE.

Sanctioned by the Board of Trade, May 1855.—In pursuance of 17 & 18 Vict. c. 104.

Name of Ship.	Official Number.	Port of Registry.	Registered Tonnage.	Description of Voyage or Employment.

Name of Seaman.	Place of Birth.	Date of Birth.

Number of Fund Ticket (if any).	Capacity.	Date of Entry.	Date of Discharge.	Place of Discharge.

I CERTIFY that the above particulars are correct, and that the above-named seaman was discharged accordingly.

Dated this day of 18

(Countersigned) _____ *Seaman.*

(Signed) _____ *Master.*

Witness _____

Address of Witness _____

Occupation of Witness _____

NOTE.—One of these certificates must be filled up and delivered to every seaman who is discharged otherwise than before a superintendent of a mercantile marine office.

Forcing seamen on shore a misdemeanor.

206. If the master or any other person belonging to any British ship wrongfully forces on shore and leaves behind, or otherwise wilfully and wrongfully leaves behind, in any place, on shore or at sea, in or out of Her Majesty's dominions, any seaman or apprentice belonging to such ship before the completion of the voyage for which such person was engaged or the return of the ship to the United Kingdom, he shall for each such offence be deemed guilty of a misdemeanor.

207. If the master of any British ship does any of the following things; (that is to say,)

No seamen to be discharged or left abroad without certificate of some functionary.

(1.) Discharges any seaman or apprentice in any place situate in any British possession abroad (except the possession in which he was shipped), without previously obtaining the sanction in writing endorsed on the agreement of some public superintendent of a mercantile marine office or other officer duly appointed by the local government in that behalf, or, (in the absence of any such functionary) of the chief officer of customs resident at or near the place where the discharge takes place:

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(2.) Discharges any seaman or apprentice at any place out of Her Majesty's dominions without previously obtaining the sanction so indorsed as aforesaid of the British consular officer there, or, (in his absence) of two respectable merchants resident there:

(3.) Leaves behind any seaman or apprentice at any place situate in any British possession abroad on any ground whatever, without previously obtaining a certificate in writing so indorsed as aforesaid from such officer or person as aforesaid, stating the fact and the cause thereof, whether such cause be unfitness or inability to proceed to sea, or desertion or disappearance:

(4.) Leaves behind any seaman or apprentice at any place out of Her Majesty's dominions, on shore or at sea, on any ground whatever, without previously obtaining the certificate indorsed in manner and to the effect last aforesaid of the British consular officer there, or (in his absence) of two respectable merchants, if there is any such at or near the place where the ship then is:

He shall for each such default be deemed guilty of a misdemeanor; and the said functionaries shall and the said merchants may examine into the grounds of such proposed discharge, or into the allegation of such unfitness, inability, desertion, or disappearance as aforesaid, in a summary way, and may for that purpose, if they think fit so to do, administer oaths, and may either grant or refuse such sanction or certificate as appears to them to be just.

Proof of such certificate to be upon the master.

208. Upon the trial of any information, indictment, or other proceeding against any person for discharging or leaving behind any seaman or apprentice, contrary to the provisions of this Act, it shall be upon such person either to produce the sanction or certificate hereby required, or to prove that he had obtained the same previously to having discharged or left behind such seaman or apprentice, or that it was impracticable for him to obtain such sanction or certificate.

Wages to be paid when seamen are left behind on ground of inability.

209. Every master of any British ship who leaves any seaman or apprentice on shore at any place abroad in or out of Her Majesty's dominions, under a certificate of his unfitness or inability to proceed on the voyage, shall deliver to one of the functionaries aforesaid, or (in the absence of such functionaries) to the merchants by whom such certificate is signed,

or, if there be but one respectable merchant resident at such place, to him, a full and true account of the wages due to such seaman or apprentice, such account when delivered to a consular officer to be in duplicate, and shall pay the same either in money or by a bill drawn upon the owner; and in the case of every bill so drawn, such functionary, merchants or merchant as aforesaid, shall by indorsement certify thereon that the same is drawn for money due on account of a seaman's wages, and shall also indorse the amount for which such bill is drawn, with such further particulars in respect of the case as the Board of Trade requires, upon the agreement of the ship; and every such master as aforesaid who refuses or neglects to deliver a full account of such wages, and pay the amount thereof in money or by bill, as hereinbefore required, shall for every such offence or default be liable, in addition to the payment of the wages, to a penalty not exceeding 10*l.*; and every such master who delivers a false account of such wages shall for every such offence, in addition to the payment of the wages, incur a penalty not exceeding 20*l.*

This section does not affect the rights of the master, or take away from the seaman any other remedies he may have for recovering his wages (*l*).

Payment of wages to seamen abroad under sect. 209 of Principal Act.

25 & 26 Vict. c. 63, s. 19.—The payment of seamen's wages required by the 209th section of the Principal Act shall, whenever it is practicable so to do, be made in money and not by bill; and in cases where payment is made by bill drawn by the master, the owner of the ship shall be liable to pay the amount for which the same is drawn to the holder or indorsee thereof; and it shall not be necessary in any proceeding against the owner upon such bill to prove that the master had authority to draw the same; and any bill purporting to be drawn in pursuance of the said section, and to be indorsed as therein required, if produced out of the custody of the Board of Trade or of the Registrar-General of Shipping and Seamen, or of any Superintendent of any Mercantile Marine Office, shall be received in evidence; and any indorsement on any such bill purporting to be made in pursuance of the said section, and to be signed by one of the functionaries therein mentioned, shall also be received in evidence, and shall be deemed to be *primâ facie* evidence of the facts stated in such indorsement.

(*l*) *The Rajah of Cochin*, Swa. 473.

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Such wages to be treated as money due to the seamen, subject to payment of expense of their subsistence and passage home.

210. Every such payment as last aforesaid, whether by bill or in money, shall, if made in any British possession, be made to the seaman or apprentice himself, and, if made out of Her Majesty's dominions, to the consular officer, who shall, if satisfied with the account, indorse on one of the duplicates thereof, a receipt for the amount paid or bill delivered, and shall return the same to the master; and the master shall, within forty-eight hours after his return to his port of destination in the United Kingdom, deliver the same to the superintendent there; and the consular officer shall retain the other duplicate of the said account, and shall, if the seaman or apprentice subsequently obtains employment at or otherwise quits the port, deduct out of the sum received by him as aforesaid any expenses which have been incurred by him in respect of the subsistence of the seaman or apprentice under the provisions herein contained, except such as the master or owner of the ship is hereby required to pay, and shall pay the remainder to the seaman or apprentice, and shall also deliver to him an account of the sums so received and expended on his behalf; and shall, if the seaman or apprentice dies before his ship quits the port, deal with the same in the manner hereinafter specified in that behalf, and shall, if the seaman or apprentice is sent home at the public expense under the provisions herein contained, account for the amount received to the Board of Trade; and such amount shall, after deducting any expenses which have been duly incurred in respect of such seaman or apprentice, except such as the master or owner of the ship is hereby required to pay, be dealt with as wages to which he is entitled, and shall be paid accordingly.

Distressed seamen found abroad may be relieved and sent home at the public expense.

211. The governors, consular officers, and other officers of Her Majesty in foreign countries shall, and in places where there are no such governors or officers any two resident British merchants may, provide for the subsistence of all seamen or apprentices, being subjects of Her Majesty, who have been shipwrecked, discharged, or left behind at any place abroad, whether from any ship employed in the merchant service, or from any of Her Majesty's ships, or who have been engaged by any person acting either as principal or agent to serve in any ship belonging to any foreign power or to the subject of any foreign state, and who are in distress in any place abroad, until such time as they are able to provide them with

a passage home, and for that purpose shall cause such seamen or apprentices to be put on board some ship belonging to any subject of Her Majesty bound to any port of the United Kingdom, or of the British possession to which they belong (as the case requires), which is in want of men to make up its complement; and in default of any such ship, shall provide them with a passage home as soon as possible in some ship belonging to a subject of Her Majesty so bound as aforesaid, and shall indorse on the agreement of any ship on board of which any seaman or apprentice is so taken or sent the name of every person so sent on board thereof, with such particulars concerning the case as the Board of Trade requires, and shall be allowed for the subsistence of any such seaman or apprentice such sum per diem as the Board of Trade from time to time apppoints; and the amount due in respect of such allowance shall be paid out of any monies applicable to the relief of distressed British seamen, and granted by Parliament for the purpose, on the production of the bills of the disbursements, with the proper vouchers.

Masters of British ships compelled to take them.

212. The master of every British ship so bound as aforesaid, shall receive and afford a passage and subsistence to all seamen or apprentices whom he is required to take on board his ship under the provisions hereinbefore contained, not exceeding one for every fifty tons burden, and shall, during the passage, provide every such seaman or apprentice with a proper berth or sleeping place effectually protected against sea and weather; and on the production of a certificate signed by any governor, consular officer, or merchants by whose directions any such seaman or apprentice was received on board, specifying the number and names of such seamen or apprentices, and the time when each of them respectively was received on board, and on a declaration made by such person before a justice, and verified by the Registrar-General of Shipping and Seamen, stating the number of days during which each seaman or apprentice received subsistence and was provided for as aforesaid on board his ship, and stating also the number of men and boys forming the complement of his crew, and the number of seamen and apprentices employed on board his ship during such time, and every variation (if any) of such number, such person shall be entitled to be paid out of the said monies applicable to the relief of distressed British seamen in respect of the subsist-

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ence and passage of every seaman or apprentice so conveyed, subsisted, and provided for by him exceeding the number (if any) wanted to make up the complement of his crew, such sum per diem as the Board of Trade from time to time appoints; and if any person having charge of any such ship fails, or refuses to receive on board his ship, or to give a passage home, or subsistence to, or to provide for any such seaman or apprentice as aforesaid, contrary to the provisions of this Act, he shall incur a penalty not exceeding 100*l.* for each seaman or apprentice with respect to whom he makes such default or refusal.

Penalty.

Relief of distressed seamen to be regulated by Board of Trade.

25 & 26 Vic. c. 63, s. 22.—Whereas under the 211th and 212th sections of the Principal Act, and the 16th section of "The Merchant Shipping Act Amendment Act, 1855," provision is made for relieving and sending home seamen found in distress abroad: and whereas doubts are entertained whether power exists under the said sections of making regulations and imposing conditions which are necessary for the prevention of desertion and misconduct and the undue expenditure of public money: Be it enacted, and it is hereby declared, that the claims of seamen to be relieved or sent home in pursuance of the said sections or any of them shall be subject to such regulations and dependent on such conditions as the Board of Trade may from time to time make or impose; and no seaman shall have any right to demand to be relieved or sent home except in the cases and to the extent provided for by such regulations and conditions.

Power to sue for the amount advanced for the relief of seamen left abroad.

213. If any seaman or apprentice belonging to any British ship is discharged or left behind at any place out of the United Kingdom, without full compliance on the part of the master with all the provisions in that behalf in this Act contained, and becomes distressed and is relieved under the provisions of this Act, or if any subject of Her Majesty, after having been engaged by any person (whether acting as principal or agent) to serve in any ship belonging to any foreign power, or to the subject of any foreign power, becomes distressed and is relieved as aforesaid, the wages (if any) due to such seaman or apprentice, and all expenses incurred for his subsistence, necessary clothing, conveyance home, and burial, in case he should die abroad before reaching home, shall be a charge upon the ship, whether British or foreign, to which he so belonged as aforesaid; and the Board of Trade may in the

name of Her Majesty (besides suing for any penalties which may have been incurred) sue for and recover the said wages and expenses, with costs, either from the master of such ship as aforesaid, or from the person who is owner thereof for the time being, or, in the case of such engagement as aforesaid for service in a foreign ship, from such master or owner, or from the person by whom such engagement was so made as aforesaid; and such sums shall be recoverable either in the same manner as other debts due to Her Majesty, or in the same manner and in the same form and process in which wages due to the seaman would be recoverable by him; and in any proceedings for that purpose production of the account (if any) to be furnished as hereinbefore is provided in such cases, together with proof of payment by the Board of Trade or by the paymaster-general of the charges incurred on account of any such seaman, apprentice, or other person, shall be sufficient evidence that he was relieved, conveyed home, or buried (as the case may be) at Her Majesty's expense.

Extension of provisions concerning the relief of destitute seamen.

18 & 19 Vict. c. 91, s. 16.—The Board of Trade may issue instructions concerning the relief to be administered to distressed seamen and apprentices, in pursuance of the two hundred and eleventh and two hundred and twelfth sections of "The Merchant Shipping Act, 1854," and may by such instructions determine in what cases and under what circumstances and conditions such relief is to be administered; and all powers of recovering expenses incurred with respect to distressed seamen and apprentices, which by the two hundred and thirteenth section of the said Act are given to the Board of Trade shall extend to all expenses incurred by any foreign government for the purposes aforesaid, and repaid to such government by Her Majesty's government, and shall likewise extend to any expenses incurred by the conveying home such seamen or apprentices in foreign as well as British ships; and all provisions concerning the relief of distressed seamen and apprentices, being subjects of Her Majesty, which are contained in the said sections of the said Act, and in this section shall extend to such seamen and apprentices, not being subjects of Her Majesty as are reduced to distress in foreign parts by reason of their having been shipwrecked, discharged or left behind from any British ship; subject nevertheless to such modifications and directions concerning the cases in which relief is to be given to such foreigners, and the country to which they are to be sent, as the Board of Trade may, under the circumstances think fit to make and issue.

§§ 213, 214.

Penalty on masters of ships leaving certain seamen in distress in this country.

17 & 18 Vict. c. 120, s. 16.—If a native of any country in Asia, Africa, or any of the islands in the South Seas or the Pacific Ocean, or of any other country not having any consul in the United Kingdom is brought to the United Kingdom in any ship, British or foreign, as a seaman, and is left in the United Kingdom and within six months of his being so left becomes chargeable upon the poor-rate or commits any act by reason of the committal whereof he is liable to be convicted as an idle and disorderly person or any other act of vagrancy, the master or owner of the said ship, or in the case of a foreign ship the person who is consignee of the ship, at the time of the seaman being so left as aforesaid, shall incur a penalty not exceeding thirty pounds, unless he can show that the person so left as aforesaid, quitted the ship without the consent of the master, or that due means have been afforded by such master, owner or consignee, or one of them, to such person of returning to his native conntry, or to the country in which he was shipped; and the court inflicting such penalty may order the whole or any part of such penalty to be applied towards the relief or sending home of such person.

Volunteering into the Navy.

So much of the third part of this Act as relates to seamen volunteering into the Royal Navy, shall apply to all sea-going British ships wherever registered, and to the owners, masters, and crews of such ships, wherever the same may be (see sec. 109, p. 106).

Her Majesty may accept offers of persons recommended by the Admiralty to serve as officers of the Royal Naval Reserve.

35 & 36 Vict. c. 73, s. 17.—It shall be lawful for Her Majesty to accept from time to time the offers of any person whom the Lord High Admiral or the commissioners for executing his office may recommend to serve as officers of reserve in the Royal Navy upon such terms and conditions as to Her Majesty may from time to time seem fit; and the "Officers of the Royal Naval Reserve Act, 1863," shall be read and construed as if this clause formed part of the said Act.

Seamen allowed to leave their ships in order to enter the navy.

214. Any seaman may leave his ship for the purpose of forthwith entering into the naval service of Her Majesty, and such leaving his ship shall not be deemed a desertion therefrom, and shall not render him liable to any punishment or forfeiture whatever; and all stipulations introduced into any agreement whereby any seaman is declared to incur any forfeiture or be exposed to any loss in case he enters into Her Majesty's naval service shall be void, and every master or owner who causes any such stipulation to be so introduced shall incur a penalty not exceeding 20*l*.

215. Whenever any seaman, without having previously committed any act amounting to and treated by the master as desertion, leaves his ship in order to enter into the naval service of Her Majesty, and is received into such service, the master shall deliver to him his clothes and effects on board such ship, and shall pay the proportionate amount of his wages down to the time of such entry, subject to all just deductions as follows; (that is to say,) the master of the said ship shall pay the same to the officer authorised to receive such seaman into Her Majesty's service, either in money or by bill drawn upon the owner and payable at sight to the order of the accountant-general of the navy; and the receipt of such officer shall be a discharge for the money or bill so given; and such bill shall be exempt from stamp duty: and if such wages are paid in money, such money shall be credited in the muster book of the ship to the account of the said seaman; and if such wages are paid by bill, such bill shall be noted in the said muster book and shall be sent to the said accountant-general, who shall present the same or cause the same to be presented for payment, and shall credit the produce thereof to the account of the said seaman; and such money or produce (as the case may be) shall not be paid to the said seaman until the time at which he would have been entitled to receive the same if he had remained in the service of the ship which he had so quitted as aforesaid; and if any such bill is not duly paid when presented, the said accountant-general or the seaman on whose whose behalf the same is given may sue thereon or may recover the wages due by all or any of the means by which wages due to merchant seamen are recoverable; and if upon any seaman leaving his ship in the manner and for the purpose aforesaid, the master fail to deliver his clothes and effects, or to pay his wages as hereinbefore required, he shall, in addition to his liability to pay and deliver the same, incur a penalty not exceeding 20*l.*; provided that no officer who receives any such bill as aforesaid shall be subject to any liability in respect thereof, except for the safe custody thereof until sent to the said accountant-general as aforesaid (*a*).

Clothes to be delivered at once.

Wages to be given to the Queen's officer on account of the seamen.

216. If upon any seaman leaving his ship for the purpose of

Repayment to owner of ad-

(*a*) *The Amphitrite*, 2 Hagg. Ad. 403; and see, as to desertion, s. 243, p. 214.

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entering the naval service of Her Majesty, the owner or master of such ship shows to the satisfaction of the Admiralty that he has paid or properly rendered himself liable to pay an advance of wages to or on account of such seaman, and that such seaman has not at the time of quitting his ship duly earned such advance by service therein, and, in the case of such liability as aforesaid, if such owner or master actually satisfies the same, it shall be lawful for the Admiralty to pay to such owner or master so much of such advance as has not been duly earned, and to deduct the sum so paid from the wages of the seaman earned or to be earned in the naval service of Her Majesty.

vance paid and not duly earned.

If new seamen are engaged instead of the original seamen, the owner may apply for repayment of any extra expense he has been put to.

217. If, in consequence of any seaman so leaving his ship without the consent of the master or owner thereof, it becomes necessary for the safety and proper navigation of the said ship to engage a substitute or substitutes, and if the wages or other remuneration paid to such substitute or substitutes for subsequent service exceed the wages or remuneration which would have been payable to the said seaman under his agreement for similar service, the master or owner of the said ship may apply to the registrar of the High Court of Admiralty in England for a certificate authorising the repayment of such excess; and such application shall be in such form, and shall be accompanied by such documents, and by such statements, whether on oath or otherwise, as the judge of the said court from time to time directs.

Application how to be decided on, and amount of repayment how to be ascertained.

218. The said registrar shall, upon receiving any such application as aforesaid, give notice thereof in writing, and of the sum claimed, to the secretary to the Admiralty, and shall proceed to examine the said application, and may call upon the Registrar-General of Shipping and Seamen to produce any papers in his possession relating thereto, and may call for further evidence; and if the whole of the claim appears to him to be just, he shall give a certificate accordingly; but if he considers that such claim or any part thereof is not just, he shall give notice of such his opinion in writing under his hand to the person making the said application or his attorney or agent; and if within sixteen days from the giving of such notice such person does not leave or cause to be left at the office of the registrar of the said court a written notice demanding that the said application shall be referred to the judge of the said court,

then the said registrar shall finally decide thereon, and certify accordingly; but if such notice is left as aforesaid, then the said application shall stand referred to the said judge in his chambers, and his decision thereon shall be final, and the said registrar shall certify the same accordingly; and the said registrar and judge respectively shall in every proceeding under this Act have full power to administer oaths, and to exercise all the ordinary powers of the court, as in any other proceeding within its jurisdiction; and the said registrar or judge (as the case may be) may, if he thinks fit, allow for the costs of any proceeding under this Act any sum not exceeding 5*l.* for each seaman so quitting his ship as aforesaid; and such sum shall be added to the sum allowed, and shall be certified by the said registrar accordingly.

Costs.

219. Every certificate so given shall be sent by post or otherwise to the person making the application, his attorney or agent, and a copy thereof shall be sent to the accountant-general of the navy; and such accountant-general shall, upon delivery to him of the said original certificate, together with a receipt in writing purporting to be a receipt from the master or owner making the application, pay to the person delivering the same out of the monies applicable to the naval service of Her Majesty, and granted by parliament for the purpose, the amount mentioned in such certificate; and such certificate and receipt shall absolutely discharge the said accountant-general and Her Majesty from all liability in respect of the monies so paid or of the said application.

Accountant-General to pay sums when ascertained.

220. Every person who, in making or supporting any such application as aforesaid to the registrar of the High Court of Admiralty, forges, assists in forging, or procures to be forged, or fraudulently alters, assists in fraudulently altering, or procures to be fraudulently altered, any document, and every person who in making or supporting any such application presents or makes use of any such forged or altered document, or who in making or supporting any such application makes or gives, or assists in making or giving, or procures to be made or given, any false evidence or representation, knowing the same to be false, shall be deemed guilty of a misdemeanor.

Penalty for forgery and false representations in support of such applications.

§§ 221-223.

Provisions, Health, and Accommodation.

Survey of provisions and water on complaint made.

221. Any three or more of the crew of any British ship may complain to any officer in command of any of Her Majesty's ships, or any British consular officer, or any superintendent of a mercantile marine office, or any chief officer of customs, that the provisions or water for the use of the crew are at any time of bad quality, unfit for use, or deficient in quantity; and such officer may thereupon examine the said provisions or water, or cause them to be examined; and if on examination such provisions or water are found to be of bad quality and unfit for use, or to be deficient in quantity, the person making such examination shall signify the same in writing to the master of the ship; and if such master does not thereupon provide other proper provisions or water in lieu of any so signified to be of a bad quality and unfit for use, or does not procure the requisite quantity of any so signified to be insufficient in quantity, or uses any provisions or water which have been so signified as aforesaid to be of a bad quality and unfit for use, he shall in every such case incur a penalty not exceeding 20*l.*; and upon every such examination as aforesaid the officers making or directing the same shall enter a statement of the result of the examination in the official log, and shall send a report thereof to the Board of Trade, and such report, if produced out of the custody of such board or its officers, shall be received in evidence in any legal proceeding.

Forfeiture for frivolous complaint.

222. If the officer to whom any such complaint as last aforesaid is made certifies in such statement as aforesaid that there was no reasonable ground for such complaint, each of the parties so complaining shall be liable to forfeit to the owner out of his wages a sum not exceeding one week's wages.

Allowance for short or bad provisions.

If reduced.

223. In the following cases; (that is to say,)

(1.) If during a voyage the allowance of any of the provisions which any seaman has by his agreement stipulated for is reduced (except in accordance with any regulations for reduction by way of punishment contained in the agreement, and also except for any time during which such seaman wilfully and without sufficient cause refuses or neglects to perform his duty, or is lawfully under confinement for misconduct, either on board or on shore);

(2.) If it is shown that any of such provisions are or have during the voyage been bad in quality and unfit for use ;

If bad.

Compensation.

The seaman shall receive by way of compensation for such reduction or bad quality, according to the time of its continuance, the following sums, to be paid to him in addition to and to be recoverable as wages ; (that is to say,)

If reduced.

(1.) If his allowance is reduced by any quantity not exceeding one-third of the quantity specified in the agreement, a sum not exceeding fourpence a day.

(2.) If his allowance is reduced by more than one-third of such quantity, eightpence a day :

If bad.

(3.) In respect of such bad quality as aforesaid, a sum not exceeding one shilling a day :

But if it is shown to the satisfaction of the Court before which the case is tried that any provisions the allowance of which has been reduced could not be procured or supplied in proper quantities, and that proper and equivalent substitutes were supplied in lieu thereof, the Court shall take such circumstances into consideration, and shall modify or refuse compensation as the justice of the case may require.

Where, owing to the unexpected length of the voyage, a crew were put on short allowance, and on their claiming compensation, the owners failed to appear or explain the circumstances, the Court allowed the sum calculated to be due as compensation to be added to the sum claimed as wages (*a*).

224. *Repealed by* 30 & 31 Vict. c. 124, s. 3.

Lime or lemon juice and other anti-scorbutics to be provided and kept on board certain ships.

30 & 31 Vict. c. 124, s. 4.—The following rules shall be observed with respect to medicines, medical stores, and anti-scorbutics ; (that is to say,)

Medicines.

(1.) The Board of Trade shall from time to time issue and cause to be published scales of medicines and medical stores suitable for different ships and voyages, and shall also prepare or sanction a book or books containing instructions for dispensing the same :

Owners to provide medicines.

(2.) The owners of every ship navigating between the United Kingdom and any place out of the same shall provide and cause to be kept on board such ship a supply of medicines and medical stores in accordance with the scale appropriate to the said ship, and also

(*a*) *The Josephine*, Swa. 152; *Ship Elizabeth* v. *Rickers*, 2 Paine, C. C. (Amer. Rep.) 291.

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a copy of the said book or of one of the said books containing instructions :

Lime or lemon juice to come from bonded warehouse.

Certificate.

(3.) No lime or lemon juice shall be deemed fit and proper to be taken on board any such ship, for the use of the crew or passengers thereof, unless the same has been obtained from a bonded warehouse for and to be shipped as stores ; and no lime or lemon juice shall be so obtained or delivered from any warehouse as aforesaid unless the same is shown, by a certificate under the hand of an inspector appointed by the Board of Trade, to be proper for use on board ship, such certificate to be given upon inspection of a sample after deposit of the said lime or lemon juice in the warehouse ; nor unless the same contains fifteen per centum of proper and palatable proof spirits, to be approved by such inspector, or by the proper officer of customs, and to be added before or immediately after the inspection thereof ; nor unless the same is packed in such bottles, at such time and in such manner, and is labelled in such manner as the Commissioners of Customs may direct ; provided that when any such lime or lemon juice is deposited in any bonded warehouse, and has been approved as aforesaid by the said inspector, the said spirits, or so much of the said spirits as is necessary to make up fifteen per centum, may be added in such warehouse without payment of any duty thereon ; and when any spirit has been added to any lime or lemon juice, and the same has been labelled as aforesaid, it shall be deposited in the warehouse for delivery as ship's stores only, upon such terms and subject to such regulations of the Commissioners of Customs as are applicable to the delivery of ship's stores from the warehouse :

To contain 15 per cent. proof spirits.

To be packed in certain bottles.

As to the shipment of stores, see the " Customs Consolidation Act, 1876 " (39 & 40 Vict. c. 36).

Sufficient lime-juice to be provided for certain vessels.

(4.) The master or owner of every such foreign-going ship (except those bound to European ports or to ports in the Mediterranean Sea, and also except such ships or classes of ships bound to ports on the eastern coast of America north of the thirty-fifth degree of north latitude, and to any islands or places in the Atlantic Ocean north of the same limit, as the Board of Trade may from time to time exempt from this enactment,) shall provide and cause to be kept on board such ship a sufficient quantity of lime or lemon juice from the warehouse duly labelled as aforesaid, such labels to remain intact until twenty-four hours at least after such

ship shall have left her port of departure on her foreign voyage, or a sufficient quantity of such other anti-scorbutics, if any, of such quality, and composed of such materials, and packed and kept in such manner, as Her Majesty by Order in Council may from time to time direct:

Manner and time of serving out lime-juice.

(5.) The master of every such ship as last aforesaid shall serve or cause to be served out the lime or lemon juice with sugar (such sugar to be in addition to any sugar required by the articles) or other such anti-scorbutics as aforesaid to the crew so soon as they have been at sea for ten days, and during the remainder of the voyage, except during such time as they are in harbour and are there supplied with fresh provisions; the lime or lemon juice and sugar to be served out daily at the rate of an ounce each per day to each member of the crew, and to be mixed with a due proportion of water before being served out, or the other anti-scorbutics, if any, at such times and in such quantities as Her Majesty by Order in Council may from time to time direct:

Neglect of seaman to take lime-juice to be recorded.

(6.) If at any time when such lime or lemon juice or anti-scorbutics is or are so served out as aforesaid any seaman or apprentice refuses or neglects to take the same, such neglect or refusal shall be entered in the official log book in the manner provided by the two hundred and eighty-first section of the principal Act, and shall be signed by the master and by the mate or some other of the crew, and also by the surgeon or medical practitioner on board, if any:

Penalty for not providing medicines, &c.

And if in any such ship as aforesaid such medicines, medical stores, book of instructions, lime or lemon juice, sugar, or anti-scorbutics as are hereinbefore required are not provided, packed, and kept on board as hereinbefore required, the owner or master shall be deemed to be in fault, and shall for each default incur a penalty not exceeding twenty pounds, unless he can prove that the non-compliance with the above provisions, or any of them, was not caused through any inattention, neglect, or wilful default on his part; and if the lime or lemon juice and sugar or other anti-scorbutics are not served out in the case and manner hereinbefore directed, or if entry is not made in the official log in the case and manner hereinbefore required, the master shall be deemed to be in fault, and shall for each default incur a penalty not exceeding five pounds, unless he can prove that the non-compliance with the above provisions, or any of them, did not arise through any neglect, omission, or wilful default on his part; and if in any case it is proved that some person other than the master or owner is in default in any case under this section, then such other person shall be liable to a penalty not exceeding twenty pounds.

for not serving them out.

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If a seaman refuses to take the lime and lemon juice, and falls ill in consequence, he will not be entitled to wages during such illness. See 30 & 31 Vict. c. 124, s. 8, under s. 228, p 202.

Masters to keep weights and measures on board.

225. Every master shall keep on board proper weights and measures for the purpose of determining the quantities of the several provisions and articles served out, and shall allow the same to be used at the time of serving out such provisions and articles in the presence of a witness whenever any dispute arises about such quantities, and in default shall for every offence incur a penalty not exceeding 10*l*.

Board of Trade and local boards may appoint inspectors of medicines, who are to see that ships are properly provided.

226. Any local marine board may, upon being required by the Board of Trade so to do, appoint and remove a medical inspector of ships for the port, and may fix his remuneration, such remuneration to be subject to the control of the Board of Trade; and at ports where there are no local marine boards, the Board of Trade may appoint and remove such inspectors, and fix their remuneration; and it shall be the duty of such inspectors to inspect the medicines, medical stores, lime or lemon juice, or other articles, sugar and vinegar, required to be kept on board any such ships as aforesaid; and such inspection, if made at places where there are local marine boards, shall be made under their direction, and also in any special cases under the direction of the Board of Trade, and if made at places where there are no local marine boards, shall be made under the direction of the Board of Trade; and such medical inspectors shall for the purposes of such inspection have the same powers as the inspectors appointed by the Board of Trade under the First Part of this Act; but every such inspector, if required by timely notice in writing from the master, owner, or consignee, shall make his inspection three days at least before the ship proceeds to sea, and if the result of the inspection is satisfactory shall not again make inspection before the commencement of the voyage, unless he has reason to suspect that some of the articles inspected have been subsequently removed, injured or destroyed; and whenever any such medical inspector is of opinion that in any ship hereby required to carry such articles as aforesaid the same or any of them are deficient in quantity or quality, or are placed in improper vessels, he shall signify the same in writing to the chief officer of customs of the port where such ship is lying, and also to the master, owner, or consignee thereof, and there-

Certificate of inspection if medicines have been deficient.

upon the master of such ship, before proceeding to sea, shall produce to such chief officer of customs a certificate under the hand of such medical inspector or of some other medical inspector, to the effect that such deficiency has been supplied or remedied, or that such improper vessels have been replaced by proper vessels, as the case may require; and such chief officer of customs shall not grant a clearance for such ship without the production of such certificate, and if such ship attempts to go to sea without a clearance, may detain her until such certificate is produced; and if such ship proceeds to sea without the production of such certificate, the owner, master, or consignee thereof, shall incur a penalty not exceeding 20*l.*

Penalty.

As to the powers of inspectors appointed by the Board of Trade under the First Part of this Act, see s. 15, p. 12; and see s. 16, p. 13, as to the penalties for obstructing them in the discharge of their duties.

227. *Repealed by* 30 & 31 Vict. c. 124, s. 3.

30 & 31 Vict. c. 124, s. 5.—Any person who manufactures, sells, or keeps, or offers for sale, any such medicines or medical stores as aforesaid which are of bad quality, shall for each such offence incur a penalty not exceeding twenty pounds.

Penalty for selling, &c., medicines, &c. of bad quality.

30 & 31 Vict. c. 124, s. 6.—In any British possession out of the United Kingdom, the governor or officer administering the government for the time being shall, subject to the laws of such possession, have power to make regulations concerning the supply within such possession of lime or lemon juice, and anti-scorbutics, for the use of ships; and any lime or lemon juice or anti-scorbutics duly supplied in accordance with any such regulations shall be deemed to be fit and proper for the use of ships.

Power to governors, &c. to make regulations as to supply of lime or lemon juice.

For the rules concerning lime juice, &c., to be observed by passenger ships, as defined by the Passengers Act, 1855, see the "Passengers Act, 1855," s. 35, p. 501.

228. The following rules shall be observed with respect to expenses attendant on illness and death; (that is to say,)

Expense of medical attendance and subsistence in case of illness, and of burial in case of death, how to be defrayed.

(1.) If the master or any seaman or apprentice receives any hurt or injury in the service of the ship to which he belongs, the expense of providing the necessary surgical and medical advice, with attendance and medicines, and of his subsistence until he is cured, or dies, or is brought back to some port in the United

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Kingdom, if shipped in the United Kingdom, or if shipped in some British possession to some port in such possession, and of his conveyance to such port, and the expense (if any) of his burial, shall be defrayed by the owner of such ship without any deduction on that account from the wages of such master, seaman, or apprentice:

If removed from ship for a time, expense to fall on owner.

(2.) If the master or any seaman or apprentice is on account of any illness temporarily removed from his ship for the purpose of preventing infection, or otherwise for the convenience of the ship, and subsequently returns to his duty, the expense of such removal and of providing the necessary advice with attendance and medicines and of his subsistence whilst away from the ship, shall be defrayed in like manner:

Owner shall pay for medicines.

(3.) The expense of all medicines and surgical or medical advice and attendance given to any master, seaman, or apprentice whilst on board his ship shall be defrayed in like manner:

Other expenses deducted from wages.

(4.) In all other cases any reasonable expenses duly incurred by the owner for any seaman in respect of illness, and also any reasonable expenses duly incurred by the owner in respect of the burial of any seaman or apprentice who dies whilst on service, shall, if duly proved, be deducted from the wages of such seaman or apprentice:

By the maritime law, a seaman who falls sick during a voyage, is entitled to be cured at the vessel's expense (*a*).

Seaman's expenses in case of illness through neglect of owner or master to be paid by them.

30 & 31 Vict. c. 124, s. 7.—Whenever it is shown that any seaman or apprentice who is ill has, through the neglect of the master or owner, not been provided with proper food and water according to his agreement, or with such accommodation, medicines, medical stores, or anti-scorbutics as are required by the principal Act or by this Act, then, unless it can be shown that the illness has been produced by other causes, the owner or master shall be liable to pay all expenses properly and necessarily incurred by reason of such illness (not exceeding in the whole three months' wages), either by such seaman himself, or by Her Majesty's Government, or any officer of Her Majesty's Government, or by any parochial or other local authority on

(*a*) *Paul* v. *Eden*, 6 T. R. 325 n.; *Chandler* v. *Grieves*, 2 H. Bl. 606 n.; *The Nimrod*, Ware (Amer. Rep.), 9; *The Forest*, ibid. 420; *The Laura*, 2 Sawyer (Amer. Rep.), 242.

his behalf, and such expenses may be recovered in the same way as if they were wages duly earned: Provided that this enactment shall not operate so as to affect any further liability of any such owner or master for such neglect, or any remedy which any seaman already possesses.

Forfeiture of wages, &c. of seaman when illness caused by his own default.

30 & 31 Vict. c. 124, s. 8.—Where a seaman is by reason of illness incapable of performing his duty, and it is proved that such illness has been caused by his own wilful act or default, he shall not be entitled to wages for the time during which he is by reason of such illness incapable of performing his duty.

Medical Inspection of Seamen.

Rules for medical inspection of seamen.

30 & 31 Vict. c. 124, s. 10.—The following rules shall be observed with respect to the medical inspection of seamen; (that is to say,)

Inspectors.

(1.) At any port where there is a local marine board, the local marine board, and at other ports in the United Kingdom, the Board of Trade, may appoint a medical inspector of seamen:

Inspector to examine seamen and report to master.

(2.) Such medical inspector of seamen shall, on application by the owner or master of any ship, examine any seaman applying for employment in such ship, and shall give to the superintendent of the mercantile marine office a report under his hand stating whether such seaman is in a fit state for duty at sea, and a copy of such report shall be given to the master or owner of the ship:

Fees.

(3.) The master or owner applying for such inspection shall pay to the superintendent such fees as the Board of Trade direct, and such fees shall be paid into and form part of the mercantile marine fund:

Remuneration.

(4.) The said medical inspectors shall be remunerated for their services as the Board of Trade may direct, and such remuneration shall be paid out of the mercantile marine fund:

In British possessions.

(5.) In British possessions out of the United Kingdom the governor or other officer administering the government for the time being shall have the power of appointing medical inspectors of seamen, of charging fees for inspections when applied for, and of determining the remuneration to be paid to such inspectors.

Passenger ships cannot proceed to sea until their medicines, &c., have been inspected (see s. 44 of the "Passengers Act," p. 508.)

Expenses, if paid by consul, to be recoverable from owner.

229. If any such expenses in respect of the illness, injury, or hurt of any seaman or apprentice as are to be borne by the owner, are paid by any consular officer or other person on be-

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half of Her Majesty, or if any other expenses in respect of the illness, injury, or hurt of any seaman or apprentice whose wages are not accounted for to such officer under the provisions hereinbefore contained in that behalf are so paid, such expenses shall be repaid to such officer or other person by the master of the ship, and if not so repaid, the amount thereof, with costs, shall be a charge upon the ship, and be recoverable from the said master or from the owner of the ship for the time being as a debt due to Her Majesty, and shall be recoverable either by ordinary process of law or in the manner in which seamen are hereby enabled to recover wages; and in any proceeding for the recovery thereof the production of a certificate of the facts, signed by such officer or other person, together with such vouchers (if any) as the case requires, shall be sufficient proof that the said expenses were duly paid by such consular officer or other person as aforesaid.

Certain ships to carry medical practitioners.

230. Every foreign-going ship having one hundred persons or upwards on board shall carry on board as part of her complement some person duly authorised by law to practise as physician, surgeon, or apothecary; and in default the owner shall for every voyage of any such ship made without such medical practitioner incur a penalty not exceeding 100*l.*: Provided that nothing herein contained shall in anywise affect any provision contained in the "Passengers Act, 1855," concerning the carriage of medical practitioners by the class of ships therein named passenger ships, nor shall any such passenger ship, if not thereby required to carry a medical practitioner, be hereby required to do so.

See s. 42, of the "Passengers Act, 1855," p. 507 *et seq.*

231. *Repealed by* 30 & 31 Vict. c. 124, s. 3.

Accommodation for Seamen.

Place appropriated to seamen to have a certain space for each man, and to be properly constructed and kept clear.

30 & 31 Vict. c. 124, s. 9.—The following rules shall be observed with respect to accommodation on board British ships; (that is to say,)

(1.) Every place in any ship occupied by seamen or apprentices, and appropriated to their use, shall have for every such seaman or apprentice a space of not less than seventy-two cubic feet, and of not less than twelve superficial feet measured on the deck or floor of such place:

§ 231.

(2.) Every such place shall be such as to make the space aforesaid available for the proper accommodation of the men who are to occupy it, shall be securely constructed, properly lighted and ventilated, properly protected from weather and sea, and as far as practicable properly shut off and protected from effluvium, which may be caused by cargo or bilge water : Space to be available for accommodation and ventilated, &c.

(3.) No such place as aforesaid shall be deemed to be such as to authorise a deduction from registered tonnage, under the provisions hereinafter contained, unless there is or are in the ship one or more properly constructed privy or privies for the use of the crew ; such privy or privies to be of such number and of such construction as may be approved by the surveyor hereinafter mentioned : Not to affect tonnage unless crew have a privy.

(4.) Every such place shall, whenever the ship is registered or re-registered, be inspected by one of the surveyors appointed by the Board of Trade, under Part IV. of the principal Act, who shall, if satisfied that the same is in all respects such as is required by this Act, give to the collector of customs a certificate to that effect, and thereupon such space shall be deducted from the register tonnage : Inspection of crew space.

(5.) No deduction from tonnage as aforesaid shall be authorised unless there is permanently cut in a beam, or cut in or painted on or over the door or hatchway of every such place, the number of men which it is constructed to accommodate, with the words " Certified to accommodate seamen " : Amount of accommodation to be cut on beam.

(6.) Every such place shall be kept free from stores or goods of any kind, not being the personal property of the crew in use during the voyage : No stores to be kept there.

(7.) Upon any complaint concerning any such place as aforesaid, one of the surveyors appointed by the Board of Trade may inspect such place, and if he finds that any of the provisions of this Act with respect to the same are not complied with, he shall report the same to the collector of customs, at the port where the ship is registered, and thereupon the registered tonnage shall be altered, and the deduction aforesaid in respect of space disallowed, unless and until it shall be certified by such surveyor, or by some other surveyor appointed by the Board of Trade, that the provisions of the Act in respect of such place are fully complied with : Inspection on complaint. Deduction from tonnage disallowed without certificate.

(8.) If any such place in any ship is not kept free from goods and stores as aforesaid, the master shall be deemed to be in fault, and shall for every such failure to comply with the provisions of this section forfeit and pay to each seaman lodged in such place, the sum of one shil- Fine for storing goods in crew space.

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ling a day for each day after complaint made to him by any two or more of such seamen during which any goods or stores, not being the personal property of the crew, are stored or kept therein :

Penalty for non-compliance.

(9.) If in any other respect the provisions of this section are not observed with respect to every such place in any ship, the owner shall be deemed to be in fault, and shall for every failure to comply with the provisions of this section incur a penalty not exceeding 20*l.*

Governors abroad may appoint surveyors.

31 & 32 Vict, c. 129, s. 3.—The governor of any British possession abroad may from time to time appoint fit and proper persons to be surveyors, who shall have and exercise within such possession all the powers with respect to the inspection of crew spaces that are conferred upon the Board of Trade surveyors in the United Kingdom by section nine of the "Merchant Shipping Act, 1867."

Power of making Complaint.

Seamen to be allowed to go ashore to make complaint to a justice.

232. If any seaman or apprentice whilst on board any ship states to the master that he desires to make complaint to a justice of the peace, or consular officer, or naval officer in command of any of Her Majesty's ships, against the master or any of the crew, the said master shall, if the ship is then at a place where there is a justice or any such officer as aforesaid, so soon as the service of the ship will permit, and if the ship is not then at such a place, so soon after her first arrival at such a place as the service of the ship will permit, allow such seaman or apprentice to go ashore, or send him ashore in proper custody, so that he may be enabled to make such complaint, and shall, in default, incur a penalty not exceeding 10*l.*

Protection of Seamen from Imposition.

Sale of and charge upon wages to be invalid.

233. No wages due or accruing to any seaman or apprentice shall be subject to attachment or arrestment from any court ; and every payment of wages to a seaman or apprentice shall be valid in law, notwithstanding any previous sale or assignment of such wages, or of any attachment, incumbrance, or arrestment thereon ; and no assignment or sale of such wages or of salvage made prior to the accruing thereof shall bind the party making the same ; and no power of attorney or authority for the receipt of any such wages or salvage shall be irrevocable.

With regard to wages and their payment, see s. 181, p. 165 *et seq.* This enactment in favour of seamen is quite an exception to all the ordinary rules of law. The law is the same in America (*a*).

No debt exceeding 5*s.* recoverable till end of voyage.

234. No debt exceeding in amount five shillings, incurred by any seaman after he has engaged to serve, shall be recoverable until the service agreed for is concluded.

Penalty for overcharges by lodging-house keepers.

235. If any person demands or receives from any seaman or apprentice to the sea service payment in respect of his board or lodging in the house of such person for a longer period than such seaman or apprentice has actually resided or boarded therein, he shall incur a penalty not exceeding 10*l.*

Penalty for detaining seamen's effects.

236. If any person receives or takes into his possession or under his control any monies, documents, or effects of any seaman or apprentice to the sea service, and does not return the same or pay the value thereof, when required by such seaman or apprentice, subject to such deduction as may be justly due to him from such seaman or apprentice in respect of board or lodging or otherwise, or absconds therewith, he shall incur a penalty not exceeding 10*l.*, and any two justices may, besides inflicting such penalty, by summary order direct the amount or value of such monies, documents, or effects, subject to such deduction as aforesaid, to be forthwith paid to such seaman or apprentice.

Persons not to go on board before the final arrival of ship without permission.

237. Every person who, not being in Her Majesty's service, and not being duly authorised by law for the purpose, goes on board any ship about to arrive at the place of her destination, before her actual arrival in dock or at the place of her discharge, without the permission of the master, shall for every such offence incur a penalty not exceeding 20*l.*; and the master or person in charge of such ship may take any such person so going on board as aforesaid into custody, and deliver him up forthwith to any constable or peace officer, to be by him taken before a justice or justices, or the sheriff of the county in Scotland, and to be dealt with according to the provisions of this Act.

The meaning of this section seems to be that the mere arrival at a port will not be sufficient to allow unauthorised persons to go on board; the vessel must either have got to the place of her discharge, if at a quay or other place outside, but not in a dock. If there is a dock, and she has

(*a*) *The John E. Holbrook*, 7 Benedict (Amer. Rep.), 356.

§ 238. got inside that, that is sufficient, she is then no longer about to arrive at her place of destination, but has arrived (*a*).

Penalty for solicitations by lodging-house keepers.

238. If, within twenty-four hours after the arrival of any ship at any port in the United Kingdom, any person then being on board such ship solicits any seaman to become a lodger at the house of any person letting lodgings for hire, or takes out of such ship any effects of any seaman, except under his personal direction and with the permission of the master, he shall for every such offence incur a penalty not exceeding 5*l.*

Discipline.

The sections coming under this heading have reference to British ships alone (*b*). So much of the third part of this Act as relates to discipline shall apply to all ships registered in any of Her Majesty's dominions abroad, when such ships are out of the jurisdiction of their respective governments, and to the owners, masters, and crews of such ships (see s. 109, p. 106).

The Master's Authority over the Crew (c).

His authority is undefined.

The rule of law is that a captain's authority over the crew, and even over the passengers, is, in the strict sense of the word, undefined; or, as it has been termed, despotic. He may, in short, inflict any punishment which is reasonable; that is, any punishment which is necessary to ensure an obedience to his command in all lawful matters relating to the navigation of the ship and the preservation of good order. He is responsible for the use of those powers to the courts of this country. The punishment he inflicts ought to be applied with due moderation. And in all cases where it is possible, due inquiry ought to be made by the master of the ship before inflicting punishment: and it is advisable that the other officers should be consulted (*d*). The putting in irons is sometimes allowable, and that form of punishment is allowed by the law of the United States. The question must be one of fact—viz. whether the captain has used his power immoderately. The law is very favourable for captains, their power is most extensive, and they are only liable to punishment if they exercise it wrongly.

He is responsible to the courts.

Irons

If a seaman feels aggrieved by the captain's treatment he may bring an action, and will recover damages if the captain has acted unjustfiably and injured him (*e*). And in America it is held to be as much the duty of the captain to restrain the violence of his officers towards the crew, as

Restraint of officers.

(*a*) *Attwood* v. *Case*, 1 Q. B. D. 137.

(*b*) *Leary* v. *Lloyd*, 3 E. & E. 178.

(*c*) Part of the following note is taken from a paper read by Mr. Disraeli to a deputation of shippers that met to petition against the conviction of Captain Barnes of *The Locksley Hall* for having put a seaman in irons.—*Pall Mall Gazette*, May 16th, 1876. *The Agincourt*, 1 Hagg. Ad. 271; Conkling's U. S. Admiralty Practice (2nd ed.), 429.

(*d*) *Murray* v. *Moultrie*, 6 C. & P. 471.

(*e*) *The Enchantress*, 1 Hagg. Ad. 395.

to repress insubordination of the men. If he fails to protect the men from their officers he will be liable to damages (*g*).

The officers of the ship may, if their conduct is highly reprehensible, be degraded from their rank, but the master must exercise this authority with great care, and not use it in the case of trivial offences (*h*).

Degrading of officers.

Seamen, not part of the crew, and other persons whom captains are compelled to carry in their ships, are subject to their authority in the same manner as the crew (see s. 245, p. 219). With respect to the master's authority over passengers, see the "Passengers Act, 1855," s. 60 p. 518).

Misconduct endangering ship or life or limb a misdemeanor.

239. Any master of or any seaman or apprentice belonging to any British ship who by wilful breach of duty, or by neglect of duty, or by reason of drunkenness, does any act tending to the immediate loss, destruction, or serious damage of such ship, or tending immediately to endanger the life or limb of any person belonging to or on board of such ship, or who by wilful breach of duty, or by neglect of duty, or by reason of drunkenness, refuses or omits to do any lawful act proper and requisite to be done by him for preserving such ship from immediate loss, destruction, or serious damage, or for preserving any person belonging to or on board of such ship from immediate danger to life or limb, shall for every such offence be deemed guilty of a misdemeanor.

Power of Admiralty Courts to remove master.

240. Any Court having Admiralty jurisdiction in any of Her Majesty's dominions may, upon application by the owner of any ship being within the jurisdiction of such Court, or by the part owner or consignee, or by the agent of the owner, or by any certificated mate, or by one-third or more of the crew of such ship, and upon proof on oath to the satisfaction of such Court that the removal of the master of such ship is necessary, remove him accordingly; and may also, with the consent of the owner or his agent, or the consignee of the ship, or if there is no owner or agent of the owner or consignee of the ship within the jurisdiction of the Court, then without such consent, appoint a new master in his stead; and may also make such order, and may require such security in respect of costs in the matter, as it thinks fit.

(*g*) *Anderson* v. *Ross*, 2 Sawyer (Amer. Rep.), 91.
(*h*) *The Ship Mentor*, 4 Mason (Amer. Rep.), 101; *Sherwood* v. *M'Intosh*, Ware (Amer. Rep.), 109.

Discharge of Master.

§§ 240, 241.

Master has same rights as other agents.

The master is the agent or servant of the owners, and is subject to the same duties and has the same rights as other agents or servants. If wrongfully dismissed he will be entitled to damages. The importance of his functions render it necessary that there should be some other means of dismissing him beside the ordinary discharge by his employers, and as, by s. 540, any Court having Admiralty jurisdiction may remove him, it is presumed that this is within the powers of a County Court, although this power is not specially given to such Courts (see under s. 543, p. 451). A Naval Court may order him to be superseded (see s. 263, subs. (1), p. 227).

If he is not a part owner.

If he is a part owner.

When a master is not a part owner, in order to dismiss him, the Court requires that the majority of owners should declare their disinclination to continue him in possession, and it will not enter minutely into their reasons. But if he is a part owner, some special reason is necessary to induce the Court to interpose (*i*). Section 239 does not in any way limit the powers of the Court (*k*). An attempt by the master to defraud his owners by charging a payment of 5*l.* as 25*l.* is a sufficient necessity for removing him (*k*). So, if he orders goods for the vessel in disobedience to the owners' commands (*l*), or if he makes, under special circumstances, a secret agreement with a charterer to be paid a commission out of the freight, the circumstances may justify his dismissal (*m*). A master is bound to employ his whole time and attention in the service of his employer, and to enter into no engagement for his own benefit (*n*) and a custom allowing him to trade on his own account during the voyage cannot be maintained (*o*).

Master must give his whole attention to his employer.

Power to investigate cases of alleged incompetency and misconduct.

241. If the Board of Trade or any local marine board has reason to believe that any master or mate is from incompetency or misconduct unfit to discharge his duties, the Board of Trade may either institute an investigation, or may direct the local marine board at or nearest to the place at which it may be convenient for the parties and witnesses to attend, to institute the same, and thereupon such persons as the Board of Trade may appoint for the purpose, or, as the case may be, the local marine board, shall, with the assistance of a local stipendiary magistrate (if any), and if there is no such magistrate, of a competent legal assistant to be appointed by the Board of Trade, conduct the investigation, and may summon the master

(*i*) *The New Draper*, 4 C. Rob. 287; *The See Reuter*, 1 Dods. Ad. 23; *Loring* v. *Illsley*, 1 Cal. (Amer. Rep.), 24.
(*k*) *The Royalist*, 32 L. J. (Ad.), 105; *The Victoria*, Swa. 408.
(*l*) *The Princess Helena*, Lush. 190.
(*m*) *Brennan* v. *Preston*, 2 De G. M. & G. 813.
(*n*) *Thompson* v. *Havelock*, 1 Camp. 527.
(*o*) *Diplock* v. *Blackburn*, 3 Camp. 343; *Gardner* v. *M'Cutcheon*, 4 Beav. 544.

or mate to appear, and shall give him full opportunity of making a defence either in person or otherwise, and shall for the purpose of such investigation have all the powers given by the First Part of this Act to inspectors appointed by the Board of Trade, and may make such order with respect to the costs of such investigation as they may deem just; and shall on the conclusion of the investigation make a report upon the case to the Board of Trade; and in cases where there is no local marine board before which the parties and witnesses can conveniently attend, or where such local marine board is unwilling to institute the investigation, the Board of Trade may direct the same to be instituted before two justices or a stipendiary magistrate; and thereupon such investigation shall be conducted, and the results thereof reported, in the same manner and with the same powers in and with which formal investigations into wrecks and casualties are directed to be conducted, and the results thereof reported, under the provisions contained in the Eighth Part of this Act, save only that, if the Board of Trade so directs, the person bringing the charge of incompetency or misconduct to the notice of the Board of Trade shall be deemed to be the party having the conduct of the case.

As to investigations into wrecks, see s. 432, p. 364 *et seq.*

Power of Board of Trade and local marine board to investigate conduct of certificated engineers.

25 & 26 Vict. c. 63, s. 11.—The power by the 241st section of the principal Act given to the Board of Trade or to any local marine board of instituting investigations into the conduct of any master or mate whom it has reason to believe to be from incompetency or misconduct unfit to discharge his duties, shall extend to any certificated engineer whom the Board of Trade or any local marine board has reason to believe to be from incompetency or misconduct unfit to discharge his duties, in the same manner as if in the said section the words "certificated engineer" had been inserted after "master" wherever "master" occurs in such section.

Cancellation, &c. of Certificates.

Board of Trade may cancel or suspend certificates in certain cases.

242. The Board of Trade may suspend or cancel the certificate (whether of competency or service) of any master or mate in the following cases; (that is to say,)

If master has been incompetent.

(1.) If upon any investigation made in pursuance of the last preceding section, he is reported to be incompetent,

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or to have been guilty of any gross act of misconduct, drunkenness, or tyranny:

If loss of ship is due to master's wrongful act.

(2.) If upon any investigation conducted under the provisions contained in the Eighth Part of this Act, or upon any investigation made by a Naval Court constituted as hereinafter mentioned, it is reported that the loss or abandonment of or serious damage to any ship or loss of life has been caused by his wrongful act or default:

If superseded by a Court.

(3.) If he is superseded by the order of any Admiralty Court or of any Naval Court constituted as hereinafter mentioned (*see sec.* 260, *p.* 226 *et seq.*):

If convicted.

(4.) If he is shown to have been convicted of any offence:

If guilty of misconduct, tyranny, &c.

(5.) If upon any investigation made by any court or tribunal authorised or hereafter to be authorised by the legislative authority in any British possession to make inquiry into charges of incompetency or misconduct on the part of masters or mates of ships, or as to shipwrecks or other casualties affecting ships, a report is made by such court or tribunal to the effect that he has been guilty of any gross act of misconduct, drunkenness, or tyranny, or that the loss or abandonment of or serious damage to any ship or loss of life has been caused by his wrongful act or default, and such report is confirmed by the governor or person administering the government of such possession:

Penalty for non-compliance.

And every master or mate whose certificate is cancelled or suspended shall deliver it to the Board of Trade or as it directs, and in default shall for each offence incur a penalty not exceeding 50*l.*; and the Board of Trade may at any subsequent time grant to any person whose certificate has been cancelled a new certificate of the same or of any lower grade.

Power of cancelling certificate to rest with the Court which hears the case.

25 & 26 Vict. c. 63, s. 23.—The following rules shall be observed with respect to the cancellation and suspension of certificates, that is to say:—

(1.) The power of cancelling or suspending the certificate of a master or mate by the 242nd section of the Principal Act conferred on the Board of Trade shall (except in the case provided for by the fourth paragraph of the said section) vest in and be exercised by the local marine board, magistrates, Naval Court, Admiralty Court, or other court or tribunal by which the case is investigated

or tried, and shall not in future vest in or be exercised by the Board of Trade:

Certificated engineers.

(2.) Such power shall extend to cancelling or suspending the certificates of engineers in the same manner as if "certificated engineer" or "certificated engineers" were inserted throughout such section after "master" or "masters:"

Court to send report to Board of Trade.

(3.) Every such board, court, or tribunal shall at the conclusion of the case, or as soon afterwards as possible, state in open court the decision to which they may have come with respect to cancelling or suspending certificates, and shall in all cases send a full report upon the case, with the evidence, to the Board of Trade, and shall also, if they determine to cancel or suspend any certificate, forward such certificate to the Board of Trade with their report:

Certificate may be returned.

(4.) It shall be lawful for the Board of Trade, if they think the justice of the case require it, to re-issue and return any certificate which has been cancelled or suspended, or shorten the time for which it is suspended, or grant a new certificate of the same or any lower grade in place of any certificate which has been cancelled or suspended:

(5.) *Virtually repealed by* 39 & 40 Vict. c. 80, s. 44. *This sub-section made some changes in sects.* 434, *and* 437, *but the parts of these two sections that it altered are repealed by the above Act.*

Report to be sent to owner.

(6.) No certificate shall be cancelled or suspended under this section, unless a copy of the report or a statement of the case upon which the investigation is ordered has been furnished to the owner of the certificate before the commencement of the investigation, nor, in the case of investigations conducted by justices or a stipendiary magistrate, unless one assessor at least expresses his concurrence in the report.

Certificate to be delivered up.

25 & 26 Vict. c. 63, s. 24.—Every master or mate or engineer whose certificate is or is to be suspended or cancelled in pursuance of this Act shall, upon demand of the board, court, or tribunal by which the case is investigated or tried, deliver his certificate to them, or, if it is not demanded by such board, court, or tribunal, shall, upon demand, deliver it to the Board of Trade, or as it directs, and in default shall for each offence incur a penalty not exceeding fifty pounds.

Penalty.

Offences of Seamen.

Offences of seamen and apprentices

243. Whenever any seaman who has been lawfully engaged or any apprentice to the sea service commits any of the following

§ 243. offences he shall be liable to be punished summarily as follows: (that is to say,)

and their punishments.

Desertion:

(1.) For desertion he shall be liable to imprisonment for any period not exceeding twelve weeks, with or without hard labour, and also to forfeit all or any part of the clothes and effects he leaves on board, and all or any part of the wages or emoluments which he has then earned, and also, if such desertion takes place abroad, at the discretion of the court, to forfeit all or any part of the wages or emoluments he may earn in any other ship in which he may be employed until his next return to the United Kingdom, and to satisfy any excess of wages paid by the master or owner of the ship from which he deserts to any substitute engaged in his place at a higher rate of wages than the rate stipulated to be paid to him:

Neglecting or refusing to join, or to proceed to sea, absence within twenty-four hours before sailing, and absence without leave:

(2.) For neglecting or refusing, without reasonable cause, to join his ship, or to proceed to sea in his ship, or for absence without leave at any time within twenty-four hours of the ship's sailing from any port either at the commencement or during the progress of any voyage, or for absence at any time without leave and without sufficient reason from his ship or from his duty not amounting to desertion or not treated as such by the master, he shall be liable to imprisonment for any period not exceeding ten weeks, with or without hard labour, and also, at the discretion of the court, to forfeit out of his wages a sum not exceeding the amount of two days' pay, and in addition for every twenty-four hours of absence either a sum not exceeding six days' pay, or any expenses which have been properly incurred in hiring a substitute:

Quitting without leave before ship is secured:

(3.) For quitting the ship without leave after her arrival at her port of delivery and before she is placed in security, he shall be liable to forfeit out of his wages a sum not exceeding one month's pay:

Act of disobedience:

(4.) For wilful disobedience to any lawful command he shall be liable to imprisonment for any period not exceeding four weeks, with or without hard labour, and also, at the discretion of the court, to forfeit out of his wages a sum not exceeding two days' pay:

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(5.) For continued wilful disobedience to lawful commands, or continued wilful neglect of duty, he shall be liable to imprisonment for any period not exceeding twelve weeks, with or without hard labour, and also, at the discretion of the court, to forfeit for every twenty-four hours' continuance of such disobedience or neglect either a sum not exceeding six days' pay, or any expenses which have been properly incurred in hiring a substitute : Continued disobedience :

(6.) For assaulting any master or mate he shall be liable to imprisonment for any period not exceeding twelve weeks, with or without hard labour : Assault on officers :

(7.) For combining with any other or others of the crew to disobey lawful commands, or to neglect duty, or to impede the navigation of the ship or the progress of the voyage, he shall be liable to imprisonment for any period not exceeding twelve weeks, with or without hard labour : Combining to disobey.

(8.) For wilfully damaging the ship, or embezzling or wilfully damaging any of her stores or cargo, he shall be liable to forfeit out of his wages a sum equal in amount to the loss thereby sustained, and also, at the discretion of the court, to imprisonment for any period not exceeding twelve weeks, with or without hard labour : Wilful damage and embezzlement :

(9.) For any act of smuggling of which he is convicted, and whereby loss or damage is occasioned to the master or owner, he shall be liable to pay to such master or owner such a sum as is sufficient to reimburse the master or owner for such loss or damage ; and the whole or a proportionate part of his wages may be retained in satisfaction or on account of such liability, without prejudice to any further remedy. Act of smuggling causing loss to owner.

Desertion.

No defininition of desertion is given in these Acts, and it was said by Dr. Lushington, that "it would perhaps be difficult to state any definition which would comprise that offence under the variety of circumstances that may occur (*p*)." Desertion, in the sense of the maritime law, is a quitting of the ship and her service, not only without leave, and against the duty of the party, but with an intent not again to return to the ship's duty. There must be the act of quitting the ship, *animo derelinquendi*, or *animo non revertendi*. If a seaman quit the ship without leave, but with Not defined in the Acts. Meaning of the term. Must be intention to quit.

(*p*) *The Westmoreland*, 1 W. Rob. 221.

an intent to return to duty, however blameable his conduct may be, it is not the offence of desertion (*q*).

Forfeiture of wages.

By 11 Wm. III. c. 7, s. 17, all seamen, officers, or sailors who shall desert their ships or vessels wherein they are hired to serve for that voyage, shall for such offence forfeit all such wages as shall then be due to him or them. The forfeiture of wages is also enjoined by the maritime law, but that law inculcates a reasonable indulgence to human infirmity, and especially to the known thoughtlessness and rashness of seamen. It

Waiver.

favours repentance and condonation, and even in a case of clear desertion, if within a reasonable time, the seaman seeks to return, and repair the injury done by his misconduct, the circumstances may justify the captain in receiving him back, and partially waiving the forfeiture of wages (*r*).

If, however, the seaman has absented himself from the vessel, with the intention of returning, however long he may be away, his offence will not entail a total forfeiture of wages (*s*). In America "absence from

American law.

the ship for more than forty-eight hours without leave" constitutes a statutory desertion (*t*).

Joining the Royal Navy.

Seamen are allowed to quit their ship for the purpose of *forthwith* joining the Royal Navy (see s. 214, p. 192); but a seaman who left his vessel in defiance of the master, using opprobrious language, and without making any declaration of his intention to serve the Crown, was held guilty of desertion, even though he did afterwards join the Royal Navy (*u*).

Instances of desertion.

The following acts have been held to amount to desertion by the maritime law. Leaving the vessel before she is moored and her cargo discharged unless on account of illness (*x*); refusing to return on board after being absent on leave (*y*), or after being separated from the ship by wreck or some other circumstance, when it was the seaman's duty to return (*z*); and quitting the ship while she is in a river waiting till there is room for her in the port (*a*). But by subs. (2) and (3) of this section the punishment for certain similar acts, though it would be a total forfeiture of wages by the maritime law, is reduced and left to the discretion of the Court within certain limits. And it seems that the absence of a seaman "at any time without leave and without sufficient reason from his ship or from his duty," may be treated as desertion by the master, and if so treated, it is presumed that a total forfeiture of wages may follow. Formerly under the maritime law there was no power in the Court to modify the penalty (*b*). See s. 250, p 221, as to how desertion may be proved.

Cases not amounting to desertion.

It is not desertion if the master or officers, by inhuman treatment,

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(*q*) See the judgment of Story, J., in *Cloutman* v. *Tunison*, 1 Sumner (Amer. Rep.), 375; *The Two Sisters*, 2 W. Rob. 138; *Coffin* v. *Jenkins*, 3 Story (Amer. Rep.) 113.

(*r*) Kent's Commentaries (12th ed., 1873), III. 199; *Cloutman* v. *Tunison*, 1 Sumner (Amer. Rep.), 375; *Miller* v. *Brant*, 2 Camp. 590; *Ingraham* v. *Albee*, Blatch and H. (Amer. Rep.), 289.

(*s*) *The Two Sisters*, 2 W. Rob. 138.

(*t*) Act of 1790, c. 29, s. 5.

(*u*) *The Amphitrite*, 2 Hagg. Ad. 403.

(*x*) *The Baltic Merchant*, Edw. 91; *The Test*, 3 Hagg. Ad. 315.

(*y*) *The Bulmer*, 1 Hagg. Ad. 163; *The Jupiter*, 2 Hagg. Ad. 221.

(*z*) *Boardman* v. *Brig Elizabeth*, 1 Pet. Ad. (Amer. Rep.), 128.

(*a*) *The Pearl*, 5 C. Rob. 224.

(*b*) *The Pearl*, 5 C. Rob. 230; *The Blake*, 1 W. Rob. 87.

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compel the seaman to leave the ship (*c*); or if he quits by permission of a person whom he reasonably thought had authority to give him leave (*d*); or, if during a collision, the seaman, under the impression that his own vessel is sinking, jumps on board another ship, and is unable to rejoin his own (*e*). Nor is it desertion to leave the ship because the original voyage has been changed or deviated from (*f*), or because the provisions are so limited or bad as to cause great hardship (*g*), unless these events have been brought about by stress of weather or some other unavoidable cause (*h*).

And if the seaman gets drunk and overstays his leave (*i*), or if he is imprisoned for some disorderly frolic (*k*), or by the master causing him to be imprisoned (*l*), or if he is left behind at a foreign port through his own negligence, his conduct will not be desertion (*m*).

With regard to forfeiture of wages for other causes, see s. 171, p. 157. If seamen wish to complain of the master, he is obliged to allow them to go on shore for this purpose (see s. 232, p. 206). See s. 252, p. 222, as to the amount of forfeiture when a seaman has contracted to be paid by the voyage, or by the run, or by the share.

Survey of ships alleged by seamen to be unseaworthy.

34 & 35 Vict. c. 110, s. 7.—Whenever in any proceeding against any seaman or apprentice belonging to any ship for desertion, or for neglecting or refusing to join or to proceed to sea in his ship, or for being absent from or quitting the same without leave, it is alleged by one-fourth of the seamen belonging to such ship, or, if the number of such seamen exceed twenty, by not less than five such seamen, that such ship is, by reason of unseaworthiness, overloading, improper loading, defective equipment, or for any other reason, not in a fit condition to proceed to sea, or that the accommodation in such ship is insufficient, the court having cognizance of the case shall take such means as may be in their power to satisfy themselves concerning the truth or untruth of such allegation, and shall for that purpose receive the evidence of the person or persons making the same, and shall have power to summon any other witnesses whose evidence they may think it desirable to hear; the court shall thereupon, if satisfied that the allegation is groundless, proceed to adjudicate, but if not so satisfied shall cause such ship to be surveyed.

Complaint to master must be made first.

Provided that no seaman or apprentice charged with deser-

(*c*) *Limland* v. *Stephens*, 3 Esp. 269; *Edward* v. *Trevellick*, 4 E. & B. 59; *The America*, Blatch & H. (Amer. Rep.), 185.
(*d*) *Edward* v. *Trevellick*, 4 E. & B. 59; *The Frederick*, 1 Hagg. Ad. 211.
(*e*) *Hanson* v. *Rowell*, 1 Sprague (Amer. Rep.), 117.
(*f*) *The Minerva*, 1 Hagg. Ad. 368; *U. S.* v. *Matthews*, 2 Sumner (Amer. Rep.), 470.
(*g*) *The Castalia*, 1 Hagg. Ad. 59; *Ulary* v. *Ship Washington*, Crabbe (Amer. Rep.), 204.
(*h*) *The Cambridge*, 2 Hagg. Ad. 247.
(*i*) *The Ealing Grove*, 2 Hagg. Ad. 16.
(*k*) *The Agincourt*, 1 Hagg. Ad. 281.
(*l*) *The Westmoreland*, 1 W. Rob. 216.
(*m*) *Button* v. *Thompson*, L. R. 4 C. P. 330.

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Surveyors. For the purposes of this section, the court shall require any of the surveyors appointed by the Board of Trade, under the "Merchant Shipping Act, 1854," or any person appointed for the purpose by the Board of Trade, or, if such surveyor or person cannot be obtained without unreasonable expense or delay, or is not, in the opinion of the court, competent to deal with the special circumstances of the case, then any other impartial surveyor appointed by the court, and having no interest in the ship, her freight, or cargo, to survey the ship, and to answer any question concerning her which the court may think

Report of survey. fit to put. Such surveyor or other person shall survey the ship, and make his report in writing to the court, including an answer to every question put to him by the court. The court shall cause such report to be communicated to the parties, and unless it is proved to the satisfaction of the court that the opinions expressed in such report are erroneous, the court shall determine the questions before them in accordance with those opinions.

Powers of surveyor. For the purpose of such survey, a surveyor shall have all the powers of an inspector appointed by the Board of Trade, under the "Merchant Shipping Act, 1854" (*see sec.* 15, *p.* 12).

Costs. The costs (if any) of the survey shall be determined by the Board of Trade according to a scale of fees to be fixed by them, and shall be paid in the first instance out of the Mercantile Marine Fund.

If it is proved to the satisfaction of the court that the ship is in a fit condition to proceed to sea, or, as the case may be, that the accommodation is sufficient, the costs of the survey shall be paid by the person or persons upon whose demand, or in consequence of whose allegation, the survey was made, and may be deducted by the master or owner out of the wages due or to become due to such person or persons, and shall be paid over to the Board of Trade.

If it is proved that the ship is not in a fit condition to proceed to sea, or, as the case may be, that the accommodation is insufficient, the costs of the survey shall be paid to the Board of Trade by the master or owner.

Sending an unseaworthy ship to sea is now made a misdemeanor, and it lies on the person so sending her, to prove that he used all reasonable means to insure her going to sea in a seaworthy condition (see the "Merchant Shipping Act, 1876," s. 4, under s. 291, p. 244).

Compensation to seamen for unnecessary 36 & 37 Vict. c. 85, s. 9.—If a seaman or apprentice belonging to any ship is detained on a charge of desertion or any kindred offence, and if upon a survey of the ship being made

under section seven of the "Merchant Shipping Act, 1871," it is proved that she is not in a fit condition to proceed to sea, or that her accommodation is insufficient, the owner or master of the ship shall be liable to pay to such seaman or apprentice such compensation for his detention as the court having cognizance of the proceedings may award.

detention on charge of desertion.

244. Upon the commission of any of the offences enumerated in the last preceding section (sec. 243), an entry thereof shall be made in the official log book, and shall be signed by the master and also by the mate or one of the crew; and the offender, if still in the ship, shall before the next subsequent arrival of the ship at any port, or if she is at the time in port, before her departure therefrom, either be furnished with a copy of such entry or have the same read over distinctly and audibly to him, and may thereupon make such reply thereto as he thinks fit; and a statement that a copy of the said entry has been so furnished, or that the same has been so read over as aforesaid, and the reply (if any) made by the offender, shall likewise be entered and signed in manner aforesaid; and in any subsequent legal proceeding the entries hereinbefore required shall, if practicable, be produced or proved, and in default of such production or proof the court hearing the case may, at its discretion, refuse to receive evidence of the offence.

Entry of offences to be made in official log, and to be read over or a copy given to the offender, and his reply, if any, to be also entered.

Official forms of log-books are issued by the Board of Trade, and the official log of every ship must be kept in a sanctioned form (see s. 280, p. 239). The ship's log is evidence of the highest class (*n*), so long as it is used against the parties making it, but it cannot be made evidence for them (*o*).

Log as evidence.

245. Every seafaring person whom the master of any ship is, under the authority of this Act or of any other Act of Parliament, compelled to take on board and convey, and every person who goes to sea in any ship without the consent of the master or owner or other person entitled to give such consent, shall, so long as he remains in such ship be subject to the same laws and regulations for preserving discipline, and to the same penalties and punishments for offences constituting or tending to a breach of discipline, to which he would be subject if he were a member of the crew and had signed the agreement.

Seamen whom masters of ships are compelled to convey, and persons going on ship without leave, to be subject to penalties for breach of discipline.

(*n*) *L'Etoile*, 2 Dods. Ad. 113.
(*o*) *The Sociedade Feliz*, 1 W. Rob. 113; *The Eleanor*, Edw. 163.

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With respect to the master's authority over the crew, see s. 238, p. 208.

Master or owner may apprehend deserters without warrant.

246. Whenever, either at the commencement or during the progress of any voyage, any seaman or apprentice neglects or refuses to join, or deserts from or refuses to proceed to sea in, any ship in which he is duly engaged to serve, or is found otherwise absenting himself therefrom without leave, the master or any mate, or the owner, ship's husband, or consignee, may, in any place in Her Majesty's dominions with or without the assistance of the local police officers or constables, who are hereby directed to give the same, if required, and also at any place out of Her Majesty's dominions, if and so far as the laws in force at such place will permit, apprehend him without first procuring a warrant; and may thereupon in any case, and shall in case he so requires and it is practicable, convey him before some court capable of taking cognizance of the matter, to be dealt with according to law; and may for the purpose of conveying him before such court, detain him in custody for a period not exceeding twenty-four hours or such shorter time as may be necessary, or may, if he does not so require, or if there is no such court at or near the place, at once convey him on board; and if any such apprehension appears to the court before which the case is brought to have been made on improper or on insufficient grounds, the master, mate, owner, ship's husband, or consignee who makes the same or causes the same to be made shall incur a penalty not exceeding twenty pounds; but such penalty, if inflicted, shall be a bar to any action for false imprisonment in respect of such apprehension.

Deserters may be sent on board in lieu of being imprisoned.

247. Whenever any seaman or apprentice is brought before any court on the ground of his having neglected or refused to join or to proceed to sea in any ship in which he is engaged to serve, or of having deserted or otherwise absented himself therefrom without leave, such court may, if the master or the owner or his agent so requires, instead of committing the offender to prison, cause him to be conveyed on board for the purpose of proceeding on the voyage, or deliver him to the master or any mate of the ship, or the owner or his agent, to be by them so conveyed, and may in such case order any costs and expenses properly incurred by or on behalf of

the master or owner by reason of the offence to be paid by the offender, and, if necessary, to be deducted from any wages which he has then earned, or which by virtue of his then existing engagement he may afterwards earn.

Seamen imprisoned for desertion or breach of discipline may be sent on board before termination of sentence.

248. If any seaman or apprentice is imprisoned on the ground of his having neglected or refused to join or to proceed to sea in any ship in which he is engaged to serve, or of having deserted or otherwise absented himself therefrom without leave, or of his having committed any other breach of discipline, and if during such imprisonment and before his engagement is at an end his services are required on board his ship, any justice may, at the request of the master or of the owner or his agent, cause such seaman or apprentice to be conveyed on board his said ship for the purpose of proceeding on the voyage, or to be delivered to the master or any mate of the ship or to the owner or his agent, to be by them so conveyed, notwithstanding that the termination of the period for which he was sentenced to imprisonment has not arrived.

Entries and certificate of desertion abroad to be copied, sent home, and admitted in evidence.

249. In all cases of desertion from any ship in any place abroad the master shall produce the entry of such desertion in the official log-book to the person or persons hereby required to indorse on the agreement a certificate of such desertion; and such person or persons shall thereupon make and certify a copy of such entry and also a copy of the said certificate of desertion; and if such person is a public functionary he shall, and in other cases the said master shall forthwith transmit such copies to the Registrar-General of Shipping and Seamen in England: and the said registrar shall, if required, cause the same to be produced in any legal proceeding; and such copies, if purporting to be so made and certified as aforesaid, and certified to have come from the custody of the said registrar, shall in any legal proceeding relating to such desertion be received as evidence of the entries therein appearing.

Facilities for proving desertion, so far as concerns forfeiture of wages.

250. Whenever a question arises whether the wages of any seaman or apprentice are forfeited for desertion, it shall be sufficient for the party insisting on the forfeiture to show that such seaman or apprentice was duly engaged in or that he belonged to the ship from which he is alleged to have deserted, and that he quitted such ship before the completion of the voyage or engagement, or if such voyage was to terminate in

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the United Kingdom and the ship has not returned, that he is absent from her, and that an entry of the desertion has been duly made in the official log-book; and thereupon the desertion shall, so far as relates to any forfeiture of wages or emoluments under the provisions hereinbefore contained, be deemed to be proved, unless the seaman or apprentice can produce a proper certificate of discharge, or can otherwise show to the satisfaction of the court that he had sufficient reasons for leaving his ship.

Costs of procuring imprisonment may to the extent of 3*l.* be deducted from wages.

251. Whenever in any proceeding relating to seamen's wages it is shown that any seaman or apprentice has in the course of the voyage been convicted of any offence by any competent tribunal and rightfully punished therefor by imprisonment or otherwise, the court hearing the case may direct a part of the wages due to such seaman, not exceeding 3*l.*, to be applied in reimbursing any costs properly incurred by the master in procuring such conviction and punishment.

Amount of forfeiture how to be ascertained when seamen contract for the voyage.

252. Whenever any seaman contracts for wages by the voyage or by the run or by the share, and not by the month or other stated period of time, the amount of forfeiture to be incurred under this Act shall be taken to be an amount bearing the same proportion to the whole wages or share as a calendar month or other the period hereinbefore mentioned in fixing the amount of such forfeiture (as the case may be) bears to the whole time spent in the voyage; and if the whole time spent in the voyage does not exceed the period for which the pay is to be forfeited, the forfeiture shall extend to the whole wages or share.

With regard to the rules regulating wages in general, see s. 181, p. 165 *et seq.*

Application of forfeitures.

253. All clothes, effects, wages, and emoluments which under the provisions hereinbefore contained are forfeited for desertion shall be applied in the first instance in or towards the reimbursement of the expenses occasioned by such desertion to the master or owner of the ship from which the desertion has taken place; and may, if earned subsequently to the desertion, be recovered by such master, or by the owner or his agent, in the same manner as the deserter might have recovered the same if they had not been forfeited; and in any legal proceeding relating to such wages the court may order the same to be

paid accordingly; and subject to such reimbursement the same shall be paid into the receipt of Her Majesty's exchequer in such manner as the Treasury may direct, and shall be carried to and form part of the Consolidated Fund of the United Kingdom; and in all other cases of forfeiture of wages under the provisions hereinbefore contained the forfeiture shall, in the absence of any specific directions to the contrary, be for the benefit of the master or owner by whom the wages are payable.

See under s. 171, p. 157, as to forfeiture of wages generally.

Questions of forfeitures may be decided in suits for wages.

254. Any question concerning the forfeiture of or deductions from the wages of any seaman or apprentice may be determined in any proceeding lawfully instituted with respect to such wages, notwithstanding that the offence in respect of which such question arises, though hereby made punishable by imprisonment as well as forfeiture, has not been made the subject of any criminal proceeding.

Penalty for false statement as to last ship or name.

255. If any seaman on or before being engaged, wilfully and fraudulently makes a false statement of the name of his last ship or last alleged ship, or wilfully and fraudulently makes a false statement of his own name, he shall incur a penalty not exceeding 5*l.*; and such penalty may be deducted from any wages he may earn by virtue of such engagement as aforesaid, and shall, subject to reimbursement of the loss and expenses (if any) occasioned by any previous desertion, be paid and applied in the same manner as other penalties payable under this Act.

Fines to be deducted from wages, and paid to superintendent.

256. Whenever any seaman commits an act of misconduct for which his agreement imposes a fine, and which it is intended to punish by imposing such fine, an entry thereof shall be made in the official log-book, and a copy of such entry shall be furnished or the same shall be read over to the offender, and an entry of such reading over, and of the reply (if any) made by the offender shall be made, in the manner and subject to the conditions hereinbefore specified with respect to the offences against discipline specified in and punishable under this Act; and such fine shall be deducted and paid over as follows (that is to say): if the offender is discharged in the United Kingdom, and the offence and such entries in respect thereof as aforesaid are proved, in the case of a foreign-going

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ship to the satisfaction of the superintendent of a mercantile marine office before whom the offender is discharged, and in the case of a home-trade ship to the satisfaction of the superintendent at or nearest to the place at which the crew is discharged, the master or owner shall deduct such fine from the wages of the offender, and pay the same over to such superintendent; and if before the final discharge of the crew in the United Kingdom any such offender as aforesaid enters into any of Her Majesty's ships, or is discharged abroad, and the offence and such entries as aforesaid are proved to the satisfaction of the officer in command of the ship into which he so enters, or of the consular officer, officer of customs, or other person by whose sanction he is so discharged, the fine shall thereupon be deducted as aforesaid, and an entry of such deduction shall then be made in the official log-book (if any) and signed by such officer or other person; and on the return of the ship to the United Kingdom the master or owner shall pay over such fine, in the case of foreign-going ships to the superintendent before whom the crew is discharged, and in the case of home trade ships to the superintendent at or nearest to the place at which the crew is discharged; and if any master or owner neglects or refuses to pay over any such fine in manner aforesaid, he shall for each such offence incur a penalty not exceeding six times the amount of the fine retained by him: Provided that no act of misconduct for which any such fine as aforesaid has been inflicted and paid shall be otherwise punished under the provision of this Act.

Penalty.

Penalty for enticing to desert, and harbouring deserters.

257. Every person who by any means whatever persuades or attempts to persuade any seaman or apprentice to neglect or refuse to join or to proceed to sea in or to desert from his ship, or otherwise to absent himself from his duty, shall for each such offence in respect of each such seaman or apprentice incur a penalty not exceeding 10*l.*; and every person who wilfully harbours or secretes any seaman or apprentice who has deserted from his ship, or who has wilfully neglected or refused to join or has deserted from his ship, knowing or having reason to believe such seaman or apprentice to have so done, shall for every such seaman or apprentice so harboured or secreted incur a penalty not exceeding 20*l.*

Penalty for obtaining passage surreptitiously.

258. Any person who secretes himself and goes to sea in any ship without the consent of either the owner, consignee,

or master, or of a mate, or of any person in charge of such ship, or of any other person entitled to give such consent, shall incur a penalty not exceeding 20*l.* or be liable to imprisonment with or without hard labour for any period not exceeding four weeks.

See also s. 18, of the "Passengers Act, 1855," p. 485.

On change of masters, documents hereby required to be handed over to successor.

259. If during the progress of a voyage the master is superseded or for any other reason quits the ship and is succeeded in the command by some other person, he shall deliver to his successor the various documents relating to the navigation of the ship and to the crew thereof which are in his custody, and shall in default incur a penalty not exceeding 100*l.*; and such successor shall immediately on assuming the command of the ship enter in the official log a list of the documents so delivered to him.

Change of Master during Voyage.

Mate is the master's successor.

Circumstances sometimes arise which render it necessary that the master should be removed from, or should, on his own account, quit the ship during a voyage. If a master dies while the ship is at sea, or any particular circumstance occurs, such as insanity, that renders him utterly incompetent to the discharge of his duties, the first mate succeeds to the command as a matter of course (*p*), or as a *haeres necessarius* according to the maritime law (*q*); and he is invested with the same authority, duty, and responsibility as his predecessor (*r*).

Consent of owners.

As a rule the consent of the owners is necessary to ratify the appointment of a new master; but where, from pressing necessity, other parties interested in the ship or cargo have appointed a new master, the Courts will strain hard to support the appointment, provided the transaction should appear to have been conducted with perfect integrity (*s*). In one case, where the master deserted during the voyage, the consignees of the cargo appointed a successor (*s*); in another, a ship was seized by pirates, and the master murdered, she was then rescued by one of Her Majesty's vessels and the commander appointed a new master (*t*); a British consul has made such an appointment (*u*), and all these appointments have been held to be valid. But the circumstances under which it may be necessary that there should be a new master are so various, that no general rule can be laid down as to the authority of persons not the owners to appoint him, the really important matter is that they should act *bonâ*

(*p*) *The Tecumseh*, 3 W. Rob. 145; *The George*, 1 Sumner (Amer. Rep.) 151.
(*q*) *The Favourite*, 2 C. Rob. 237.
(*r*) *Hanson* v. *Royden*, L. R. 3 C. P. 49; 3 Mar. Law Cas. 8.
(*s*) *The Alexander*, 1 Dods. Ad. 281.
(*t*) *The Segredo* or *Eliza Cornish*, 17 Jur. 740.
(*u*) *The Zodiac*, 1 Hagg. Ad. 320.

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fide, and for the benefit of all concerned (*x*). A change of master must be endorsed on the certificate of registry (see s. 46, p. 47). As to the discharge of a master, see s. 240, p. 209.

Naval Courts on the High Seas and Abroad.

Naval Courts may be summoned for hearing complaints, and investigating wrecks on the high seas or abroad.

260. Any officer in command of any ship of Her Majesty on any foreign station, or, in the absence of such officer, any consular officer, may summon a Court, to be termed a "Naval Court," in the following cases (that is to say):

(1.) Whenever a complaint which appears to such officer to require immediate investigation is made to him by the master of any British ship, or by any certificated mate, or by one or more of the seamen belonging to any such ship:

(2.) Whenever the interest of the owner of any British ship or of the cargo of any such ship appears to such officer to require it:

(3.) Whenever any British ship is wrecked or abandoned, or otherwise lost at or near the place where such officer may be, or whenever the crew or part of the crew of any British ship which has been wrecked, abandoned, or lost abroad, arrives at such place.

Constitution of such courts

261. Every such Naval Court as aforesaid, shall consist of not more than five and not less than three members, of whom, if possible, one shall be an officer in the naval service of Her Majesty not below the rank of lieutenant, one a consular officer, and one a master of a British merchant ship, and the rest shall be either officers in the naval service of Her Majesty, masters of British merchant ships, or British merchants; and such Court may include the naval or consular officer summoning the same, but shall not include the master or consignee of the ship to which the parties complaining or complained against may belong; and the naval or consular officer in such Court, if there is only one such officer in the Court, or, if there is more than one, the naval or consular officer who, according to any regulations for settling their respective ranks for the time being in force, is of the highest rank, shall be the president of such Court.

General functions and

262. Every such Naval Court shall hear and investigate the

(*x*) *The Cynthia*, 16 Jur. 748.

complaint brought before it, or the cause of the wreck or abandonment (as the case may be); and may for that purpose summon and compel the attendance of parties and witnesses, and administer oaths, and order the production of documents, and shall conduct the investigation in such manner as to give any person against whom any charge is made, an opportunity of making a defence.

mode of action of such courts.

263. Every such Naval Court may, after hearing the case, exercise the following powers (that is to say) :

Powers of such courts :

(1.) It may, if unanimous that the safety of the ship or crew, or the interest of the owner, absolutely requires it, supersede the master, and may appoint another person to act in his stead ; but no such appointment shall be made without the consent of the consignee of the ship, if then at the place :

To supersede the master :

(2.) It may discharge any seaman from his ship :

To discharge a seaman :

(3.) It may order the wages of any seaman so discharged or any part of such wages to be forfeited, and may direct the same either to be retained by way of compensation to the owner, or to be paid into the receipt of Her Majesty's Exchequer in the same manner as other penalties and forfeitures under this Act :

To forfeit wages :

(4.) It may decide any questions as to wages, or fines, or forfeitures, arising between any of the parties to the proceedings :

To decide disputes as to wages, &c. :

(5.) It may direct that all or any of the costs incurred by the master or owner of any ship in procuring the imprisonment of any seaman or apprentice in a foreign port, or in his maintenance whilst so imprisoned, shall be paid out of and deducted from the wages of such seaman or apprentice, whether then or subsequently earned :

To direct costs of imprisonment to be paid out of wages :

(6.) It may exercise the same powers with regard to persons charged before it with the commission of offences at sea or abroad as are by this Act given to British consular officers :

To send home offenders for trial :

(7.) It may order the costs of the proceeding before it (if any), or any portion thereof, to be paid by any of the parties thereto, and may order any person making a frivolous or vexatious complaint to pay compensation for any loss or delay caused thereby ; and any cost or

To order payment of costs, &c.

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compensation so ordered shall be paid by such person accordingly, and may be recovered in the same manner in which the wages of seamen are recoverable, or may, if the case admits, be deducted from his wages:

And all orders duly made by any such Court under the powers hereby given to it, shall in any subsequent legal proceedings be deemed conclusive as to the rights of the parties.

The powers of superseding the master given to "any Court having Admiralty jurisdiction in Her Majesty's dominions" are different to those conferred on a Naval Court (see s. 240, p. 209) A complaint to an Admiralty Court must be by one-third of the seamen, whereas s. 260 allows one seaman to apply to a Naval Court. There are also other points of difference.

Power for Naval Courts to direct survey of ships.

34 & 35 Vict. c. 110, s. 8.—Any Naval Court may, if they think fit, direct a survey of any ship which is the subject of an investigation held before them, and such survey shall be made in the same way, and the surveyor who makes the same shall have the same powers, as if the survey had been directed by a competent Court in the course of proceedings against a seaman or apprentice for desertion or a kindred offence.

Orders to be entered in official log.

264. All orders made by any such Naval Court shall, whenever practicable, be entered in the official log book of the ship to which the parties to the proceedings before it belong, and shall be signed by the president of the court.

Report to be made of proceedings of naval courts.

265. Every such Naval Court shall make a report to the Board of Trade, containing the following particulars; (that is to say,)

(1.) A statement of the proceedings, with the order made by the court, and a report of the evidence:

Wages.

(2.) An account of the wages of any seaman or apprentice who is discharged from his ship by such court:

Wrecks.

(3.) If summoned in order to inquire into a case of wreck or abandonment, a statement of the opinion of the court as to the cause of such wreck or abandonment, with such remarks on the conduct of the master and crew as the circumstances require:

And every such report shall be signed by the president of the court; and every document purporting to be such a report and to be so signed as aforesaid shall, if produced out of the custody of some officer of the Board of Trade, be deemed to be such report, unless the contrary is proved, and shall be received in evidence, subject to all just exceptions.

266. Any person who wilfully and without due cause prevents or obstructs the making of any such complaint as last aforesaid, or the conduct of any case or investigation by any Naval Court, shall for each such offence incur a penalty not exceeding 50*l.*, or be liable to imprisonment with or without hard labour for any period not exceeding twelve weeks.

Penalty for preventing complaint or obstructing investigation.

18 & 19 Vict. c. 91, s. 18.—Any Naval Court summoned, under the provisions of the Merchant Shipping Act, 1854, to hear any complaint touching the conduct of the master or any of the crew of any ship, shall, in addition to the powers given to it by the said Act, have power to try the said master or any of the said crew for any offences against the Merchant Shipping Act, 1854, in respect of which two justices would, if the case were tried in the United Kingdom, have power to convict summarily, and by order duly made to inflict the same punishments for such offences which two justices might in the case aforesaid inflict upon summary conviction; provided, that in cases where an offender is sentenced to imprisonment the sentence shall be confirmed in writing by the senior naval or consular officer present at the place where the court is held, and the place of imprisonment, whether on land or on board ship, shall be approved by him as a proper place for the purpose, and copies of all sentences made by any Naval Court summoned to hear any such complaint as aforesaid shall be sent to the commander-in-chief or senior naval officer of the station.

Additional powers of naval courts.

Crimes committed on the High Seas and abroad.

267. All offences against property or person committed in or at any place either ashore or afloat out of Her Majesty's dominions by any master, seaman, or apprentice who at the time when the offence is committed is or within three months previously has been employed in any British ship shall be deemed to be offences of the same nature respectively, and be liable to the same punishments respectively, and be inquired of, heard, tried, determined, and adjudged in the same manner and by the same courts and in the same places as if such offences had been committed within the jurisdiction of the Admiralty of England; and the costs and expenses of the prosecution of any such offence may be directed to be paid as in the case of costs and expenses of prosecutions for offences committed within the jurisdiction of the Admiralty of England.

Offences committed by British seamen at foreign ports to be within admiralty jurisdiction.

This section extends only to masters, seamen, or apprentices, but the fact that they can be tried in England for offences committed in some foreign

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country within three months of their having been employed in any British ship, does not give our Courts any authority to cause the offender to be brought here. All systems of law require that offences should be punished where they are committed, and there is no obligation on any foreign country to deliver up a person who has committed a crime in that country. (See Part X. as to crimes committed on the high seas by any British subjects, p. 438 *et seq.*)

Conveyance of offenders and witnesses to United Kingdom or some British possession.

268. The following rules shall be observed with respect to offences committed on the high seas or abroad; (that is to say,)

Consul to make enquiries.

(1.) Whenever any complaint is made to any British consular officer of any of the offences mentioned in the last preceding section, or of any offence on the high seas having been committed by any master, seaman, or apprentice belonging to any British ship, such consular officer may inquire into the case upon oath, and may if the case so requires take any steps in his power, for the purpose of placing the offender under necessary restraint and of sending him as soon as practicable in safe custody to the United Kingdom, or to any British possession in which there is a court capable of taking cognizance of the offence, in any ship belonging to Her Majesty or to any of her subjects, to be there proceeded against according to law:

Consul may require any master to convey witnesses or offenders.

(2.) For the purpose aforesaid such consular officer may order the master of any ship belonging to any subject of Her Majesty bound to the United Kingdom or to such British possession as aforesaid to receive and afford a passage and subsistence during the voyage to any such offender as aforesaid, and to the witnesses, so that such master be not required to receive more than one offender for every one hundred tons of his ship's registered tonnage, or more than one witness for every fifty tons of such tonnage; and such consular officer shall indorse upon the agreement of the ship such particulars with respect to any offenders or witnesses sent in her as the Board of Trade requires:

Offenders to be delivered to constable.

(3.) Every such master shall on his ship's arrival in the United Kingdom, or in such British possession as aforesaid, give every offender so committed to his charge into the custody of some police officer or constable, who shall take the offender before a justice of the peace or other

magistrate by law empowered to deal with the matter, and such justice or magistrate shall deal with the matter as in cases of offences committed upon the high seas:

Penalty for non-compliance.

And any such master as aforesaid who, when required by any British consular officer to receive and afford a passage and subsistence to any offender or witness, does not receive him and afford such passage and subsistence to him, or who does not deliver any offender committed to his charge into the custody of some police officer or constable as hereinbefore directed, shall for each such offence incur a penalty not exceeding 50*l.*; and the expense of imprisoning any such offender and of conveying him and the witnesses to the United Kingdom or to such British possession as aforesaid in any manner other than in the ship to which they respectively belong, shall be part of the costs of the prosecution, or be paid as costs incurred on account of seafaring subjects of Her Majesty left in distress in foreign parts.

Inquiry into cause of death on board.

269. Whenever any case of death happens on board any foreign-going ship, the superintendent of the mercantile marine office shall on the arrival of such ship at the port where the crew is discharged inquire into the cause of such death, and shall make on the list of the crew delivered to him as herein required an indorsement to the effect either that the statement of the cause of death therein contained is in his opinion true or otherwise, as the result of the inquiry requires; and every such superintendent shall for the purpose of such inquiry have the powers hereby given to inspectors appointed by the Board of Trade under the first part of this Act; and if in the course of such inquiry it appears to him that any such death as aforesaid has been caused by violence or other improper means, he shall either report the matter to the Board of Trade, or, if the emergency of the case so requires, shall take immediate steps for bringing the offender or offenders to justice.

Depositions to be received in evidence when witness cannot be produced.

270. Whenever in the course of any legal proceedings instituted in any part of Her Majesty's dominions before any judge or magistrate, or before any person authorised by law or by consent of parties to receive evidence, the testimony of any witness is required in relation to the subject matter of such proceeding, then upon due proof, if such proceeding is insti-

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tuted in the United Kingdom, that such witness cannot be found in that kingdom, or if in any British possession, that he cannot be found in the same possession, any deposition that such witness may have previously made on oath in relation to the same subject matter before any justice or magistrate in Her Majesty's dominions, or any British consular officer elsewhere, shall be admissible in evidence subject to the following restrictions; (that is to say,)

When not admissible.

(1.) If such deposition was made in the United Kingdom, it shall not be admissible in any proceeding instituted in the United Kingdom:

(2.) If such a deposition was made in any British possession, it shall not be admissible in any proceeding instituted in the same British possession:

(3.) If the proceeding is criminal it shall not be admissible unless it was made in the presence of the person accused:

Must be authenticated.

Every deposition so made as aforesaid shall be authenticated by the signature of the judge, magistrate, or consular officer, before whom the same is made; and such judge, magistrate, or consular officer shall, when the same is taken in a criminal matter, certify, if the fact is so, and that the accused was present at the taking thereof, but it shall not be necessary in any case to prove the signature or official character of the person appearing to have signed any such deposition; and in any criminal proceeding such certificate as aforesaid shall, unless the contrary is proved, be sufficient evidence of the accused having been present in manner thereby certified; but nothing herein contained shall affect any case in which depositions taken in any proceeding are rendered admissible in evidence by any Act of Parliament, or by any Act or Ordinance of the legislature of any colony, so far as regards such colony, or to interfere with the power of any colonial legislature to make such depositions admissible in evidence, or to interfere with the practice of any court in which depositions not authenticated as hereinbefore mentioned are admissible.

Registration of and Returns respecting Seamen.

See s. 109, p. 106, as to exemptions from this part of the Act.

Establishment of register office.

271. There shall be in the port of London an office, to be called the "General Register and Record Office of Seamen,"

and the Board of Trade shall have control over the same, and may appoint and from time to time remove a registrar general, and such assistants, clerks, and servants as may be necessary, and may from time to time, with the consent of the Treasury, regulate their salaries and allowances; and such salaries and allowances, and all other necessary expenses, shall be paid by the Treasury out of any monies to be granted by Parliament for that purpose; and the Board of Trade may direct the business of the Register Office at any of the outports to be transacted at the Mercantile Marine Office, or, with the consent of the Commissioners of Customs, at the custom house of the port, and may appoint the superintendent of such office, or, with such consent as aforesaid, some officer of customs, to conduct the same; and such business shall thereupon be conducted accordingly, but shall in all cases be subject to the immediate control of the Board of Trade.

Register of seamen to be kept.

272. The said Registrar General of Shipping and Seamen shall by means of the agreements, lists, and other papers to be transmitted to him as herein directed, or by such other means as are in his power, keep a register of all persons who serve in ships subject to the provisions of this Act.

Lists to be made for all ships, containing certain particulars.

273. Every master of every foreign-going ship of which the crew is discharged in the United Kingdom, in whatever part of Her Majesty's dominions the same is registered, and of every home-trade ship, shall make out and sign a list in a form sanctioned by the Board of Trade, containing the following particulars; (that is to say,)

Ship's register.

(1.) The number and date of the ship's register and her registered tonnage:

Voyage.

(2.) The length and general nature of the voyage or employment:

Crew.

(3.) The christian names, surnames, ages, and places of birth of all the crew, including the master and apprentices; their qualities on board, their last ships or other employments, and the dates and places of their joining the ship:

Loss of any of crew.

(4.) The names of any members of the crew who have died or otherwise ceased to belong to the ship, with the times, places, causes, and circumstances thereof:

Injuries to crew.

(5.) The names of any members of the crew who have been

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maimed or hurt, with the times, places, causes, and circumstances thereof:

Wages.

(6.) The wages due to any of the crew who have died, at the times of their respective deaths:

Clothes, &c., of deceased seamen.

(7.) The clothes and other effects belonging to any of the crew who have died, with a statement of the manner in which they have been dealt with, and the money for which any of them have been sold:

(8.) *Repealed by the Births and Deaths Registration Act*, 1874 (37 & 38 Vict. c. 88, s. 54).

(9.) *Repealed by the same Act.*

Marriages on board.

(10.) Every marriage which takes place on board, with the date thereof, and the names and ages of the parties.

Lists for foreign-going ships to be delivered to superintendents on arrival.

274. In the case of foreign-going ships, the master shall, within forty-eight hours after the ship's arrival at her final port of destination in the United Kingdom, or upon the discharge of the crew, whichever first happens, deliver to the superintendent before whom the crew is discharged such list as herein-before required, and if he fails so to do shall for every default incur a penalty not exceeding 5*l.*; and such superintendent shall thereupon give to the master a certificate of such delivery; and no officer of customs shall clear inwards any foreign-going ship without the production of such certificate, and any such officer may detain any such ship until the same is produced.

Registration of Births and Deaths at Sea.

Registration of births and deaths at sea.

37 & 38 Vict. c. 88, s. 37.—The provisions of this Act (the Births and Deaths Registration Act, 1874), save as is herein expressly provided, shall not apply to the registration of births and deaths on board a vessel at sea, with respect to which the following provisions shall have effect:

Master to record birth or death in log-book.

(1.) The captain or master of or any other person having the command or charge of a British ship shall, as soon as may be after the occurrence of the birth of a child, or the death of a person on board such ship, record in his log-book or otherwise the fact of such birth or death, and the particulars required by the fourth schedule to this Act, to be registered, concerning such birth or death, or such of them as may be known to him, and shall (unless the ship is one of Her Majesty's ships), upon the arrival of such ship at any port of the

United Kingdom, or at such other time or place as the Board of Trade may from time to time, with respect to any ship or class of ships, direct, deliver, or send in such form and manner as the Board of Trade may from time to time direct, a return of the facts so recorded to the Registrar General of Shipping and Seamen.

Foreign passenger ships.

(2.) Where a ship which is not a British ship carries passengers to or from any port of the United Kingdom as the port of destination or the port of departure of such ship, the provisions of this section shall apply to the captain or master of or other person having the command or charge of such ship, in like manner as if it were a British ship.

Return may be delivered to superintendent, &c., in some cases.

(3.) Where the said return is directed by the Board of Trade (whether the ship is British or foreign) to be delivered upon the arrival of the ship, or the discharge of the crew, or otherwise, at any port or place out of the United Kingdom, the Board of Trade may, if they think fit, direct that the return instead of being delivered to the Registrar General of Shipping and Seamen shall be delivered, and the same shall accordingly be delivered, if such port or place is within Her Majesty's dominions, to the superintendent of the mercantile marine office or collector of customs at such port or place, and if it is a foreign port or place, to the principal British consular officer at the said foreign port or place, and such superintendent, collector, or officer shall send the same, as soon as may be, by post or otherwise, to the Registrar General of Shipping and Seamen.

Scotch or Irish children born.

(4.) Where it appears from any such return that the father of any child so born, or if the child is a bastard the mother of such child, was a Scotch or Irish subject of Her Majesty, or that any person whose death is mentioned in such return was a Scotch or Irish subject of Her Majesty, the Registrar General of Shipping and Seamen shall from time to time send a certified copy of so much of the return as relates to such birth or death to the Registrar General of Births and Deaths in Scotland or Ireland, as the case may require.

Transmission of returns.

(5.) The Registrar General of Shipping and Seamen shall from time to time send to the Registrar General of Births and Deaths in England a certified copy of every other such return, or of that part of every such return which is not so sent to the Registrar General of Births and Deaths in Scotland or Ireland.

Captains of Her Majesty's ships.

(6.) A captain of or other person having charge of one of Her Majesty's ships shall, upon the arrival of any such ship in any port of the United Kingdom, or at

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such other time as the Commissioners of the Admiralty may from time to time direct, deliver or send, in such manner and form as the said Commissioners may from time to time direct, a return of the facts recorded in pursuance of this section to that Registrar General of Births and Deaths to whom a copy of such return would, if the ship were a merchant ship, be sent under the provisions of this section by the Registrar General of Shipping and Seamen.

Returns to be filed.

(7.) Every Registrar General of Births and Deaths to whom a copy of any return or a return is sent in pursuance of this section shall cause the same to be filed and preserved in or copied in a book to be kept by him for the purpose, and to be called a marine register book, and such book shall be deemed to be a certified copy of a register book within the meaning of the Acts relating to the registration of births and deaths in England, Scotland, and Ireland respectively.

Penalty for non-compliance.

(8.) Every captain or master of or other person having charge of a ship who fails to comply with this section shall be liable to a penalty not exceeding five pounds for each offence; and such penalty may be recovered in the same courts and places and in the like manner, and when recovered shall be applied in like manner, as a penalty under the Merchant Shipping Act, 1854.

Application.

(9.) This section shall extend to all places and persons within British jurisdiction.

Meaning of terms.

(10.) Terms in this section shall have the same meaning as in the Merchant Shipping Act, 1854.

FOURTH SCHEDULE.

Particulars to be registered by Captain of a Ship concerning a Birth at Sea.

Date of birth.
Name (if any) and sex of the child.
Name and surname, and rank, profession, or occupation of the father.
Name and surname, and maiden surname of mother.
Nationality and last place of abode of the father and mother.

Particulars to be registered by Captain of a Ship concerning a Death at Sea.

Date of death.
Name and surname.
Sex.
Age.
Rank, profession, or occupation.
Nationality and last place of abode.
Cause of death.

275. The master or owner of every home-trade ship shall, within twenty-one days after the thirtieth day of June and the thirty-first day of December in every year, transmit or deliver to some superintendent of a mercantile marine office in the United Kingdom such list as hereinbefore required for the preceding half year, and shall in default incur a penalty not exceeding 5*l.*; and such superintendent shall give to the master or owner a certificate of such transmission or delivery; and no officer of customs shall grant a clearance or transire for any home trade ship without the production of such certificate, and any such officer may detain any such ship until the same is produced.

Lists to be delivered by home-trade ships half-yearly.

See s. 273, p. 233, as to what such lists must contain.

276. If any ship ceases by reason of transfer of ownership or change of employment to fall within the definition of a foreign-going or of a home-trade ship, the master or owner thereof shall, if such ship is then in the United Kingdom, within one month, and if she is elsewhere, within six months, deliver or transmit to the superintendent at the port to which the ship has belonged such list as hereinbefore mentioned, duly made out to the time at which she ceased to be a foreign-going or home-trade ship, and in default shall for each offence incur a penalty not exceeding 10*l.*; and if any ship is lost or abandoned, the master or owner thereof shall, if practicable, as soon as possible, deliver or transmit to the superintendent at the port to which the ship belonged such list as hereinbefore mentioned duly made out to the time of such loss or abandonment, and in default shall for each offence incur a penalty not exceeding 10*l.*

Lists to be sent home in case of transfer of ship and in case of loss.

277. All superintendents and officers of customs shall take charge of all documents which are delivered or transmitted to or retained by them in pursuance of this Act, and shall keep them for such time (if any) as may be necessary for the purpose of settling any business arising at the place where such documents come into their hands, or for any other proper purpose, and shall, if required, produce them for any of such purposes, and shall then transmit them to the Registrar General of Shipping and Seamen, to be by him recorded and preserved; and the said registrar shall, on payment of a moderate fee to be fixed by the Board of Trade, or without payment of any fee

Superintendent and other officers to transmit documents to registrar.

Registrar to permit inspection, to produce originals, and give copies.

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if the Board of Trade so directs, allow any person to inspect the same; and in cases in which the production of the original of any such document in any court of justice or elsewhere is essential, shall produce the same, and in other cases shall make and deliver to any person requiring it a certified copy of any such document or of any part thereof; and every copy purporting to be so made and certified shall be received in evidence, and shall have all the effect of the original of which it purports to be a copy.

Officers of customs to make returns of ships to registrar.

278. The collector or comptroller of customs at every port in the United Kingdom shall on or before the first day of February and the first day of August in every year transmit to the Registrar General of Shipping and Seamen a list of all ships registered in such port, and also of all ships whose registers have been transferred or cancelled in any such port since the last preceding return.

Agreements, indentures, and assignments, on arrival at a foreign port to be deposited with the consul, and at a colony with the officers of customs.

279. The following rules shall be observed with respect to the delivery of documents to British consular officers; (that is to say,)

(1.) Whenever any ship, in whatever part of Her Majesty's dominions the same is registered (except ships whose business for the time being is to carry passengers), arrives at any foreign port where there is a British consular officer, or at any port in any British possession abroad, and remains thereat for forty-eight hours, the master shall, within forty-eight hours of the ship's arrival, deliver to such consular officer, or to the chief officer of customs (as the case may be), the agreement with the crew, and also all indentures and assignments of apprenticeships, or, in the case of a ship belonging to a British possession, such of the said documents as such ship is provided with.

Consul to keep them during ship's stay.

(2.) Such officer shall keep such documents during the ship's stay in such port, and, in cases where any indorsements upon the agreement are hereby required, shall duly make the same, and shall return the said documents to the master a reasonable time before his departure, with a certificate indorsed on the agreement, stating when the same were respectively delivered and returned:

Indorsement

(3.) If it appears that the required forms have been neg-

lected, or that the existing laws have been transgressed, such officer shall make an indorsement to that effect on the agreement, and forthwith transmit a copy of such indorsement, with the fullest information he can collect regarding such neglect or transgression to the Registrar-General of Shipping and Seamen :

in case of neglect.

And if any master fails to deliver any such document as aforesaid he shall for every such default incur a penalty not exceeding 20*l.* ; and in any prosecution for such penalty it shall lie upon the master either to produce the certificate of the consular officer or officer of customs hereinbefore required, or to prove that he duly obtained the same, or that it was impracticable for him so to do.

Penalty.

Official Logs.

See under s. 109, p. 106, as to what classes of vessels are exempt from the following provisions :—

280. The Board of Trade shall sanction forms of official log books, which may be different for different classes of ships, so that each form contains blanks for the entries hereinafter required, and an official log of every ship (except ships employed exclusively in trading between ports on the coasts of the United Kingdom) shall be kept in the appropriate sanctioned form ; and such official log may, at the discretion of the master or owner, either be kept distinct from the ordinary ship's log or united therewith, so that in all cases all the blanks in the official log be duly filled up.

Official logs to be kept in forms sanctioned by Board of Trade.

281. Every entry in every official log shall be made as soon as possible after the occurrence to which it relates, and if not made on the same day as the occurrence to which it relates shall be made and dated so as to show the date of the occurrence and of the entry respecting it ; and in no case shall an entry therein in respect of any occurrence happening previously to the arrival of the ship at her final port of discharge be made more than twenty-four hours after such arrival.

Entries to be made in due time.

282. Every master of a ship for which an official log book is hereby required shall make or cause to be made therein entries of the following matters ; (that is to say,)

Entries required in official log.

(1.) Every legal conviction of any member of his crew, and the punishment inflicted :

Convictions.

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Offences.

(2.) Every offence committed by any member of his crew for which it is intended to prosecute, or to enforce a forfeiture, or to exact a fine, together with such statement concerning the reading over of such entry, and concerning the reply (if any) made to the charge, as hereinbefore required:

See s. 244, p. 219, as to the provisions relating to such entry.

Punishments. (3.) Every offence for which punishment is inflicted on board, and the punishment inflicted:

Conduct, &c., of crew. (4.) A statement of the conduct, character, and qualifications of each of his crew, or a statement that he declines to give an opinion on such particulars:

Illnesses and injuries. (5.) Every case of illness or injury happening to any member of the crew, with the nature thereof and the medical treatment adopted (if any):

(6.) *Repealed by the Births and Deaths Registration Act*, 1874 (37 & 38 Vict. c. 88, s. 54). *See under s.* 274, *p.* 234.

(7.) *Repealed by the same Act.*

Marriages. (8.) Every marriage taking place on board, with the names and ages of the parties:

Quitting ship by seaman. (9.) The name of every seaman or apprentice who ceases to be a member of the crew, otherwise than by death, with the place, time, manner, and cause thereof:

Wages of men entering navy. (10.) The amount of wages due to any seaman who enters Her Majesty's service during the voyage:

Wages of deceased seamen. (11.) The wages due to any seaman or apprentice who dies during the voyage, and the gross amount of all deductions to be made therefrom:

Sale of deceased men's effects. (12.) The sale of the effects of any seaman or apprentice who dies during the voyage, including a statement of each article sold, and the sum received for it:

Collisions. (13.) Every collision with any other ship, and the circumstances under which the same occurred:

Entries, how to be signed. 283. The entries hereby required to be made in official log books shall be signed as follows; that is to say, every such entry shall be signed by the master and by the mate or some other of the crew, and every entry of illness, injury, or death, shall be also signed by the surgeon or medical practitioner on

board (if any); and every entry of wages due to or of the sale of the effects of any seaman or apprentice who dies shall be signed by the master and by the mate and some other member of the crew; and every entry of wages due to any seaman who enters Her Majesty's service shall be signed by the master, and by the seaman or by the officer authorised to receive the seaman into such service.

Penalties in respect of official logs.

284. The following offences in respect of official log books shall be punishable as hereinafter mentioned; (that is to say,)

If not kept as required.

(1.) If in any case an official log book is not kept in the manner hereby required, or if any entry hereby directed to be made in any such log book is not made at the time and in the manner hereby directed, the master shall for each such offence incur the specific penalty herein mentioned in respect thereof, or where there is no such specific penalty, a penalty not exceeding 5*l.*:

For entry after ship's arrival.

(2.) Every person who makes or procures to be made or assists in making any entry in any official log book in respect of any occurrence happening previously to the arrival of the ship at her final port of discharge more than twenty-four hours after such arrival, shall for each such offence incur a penalty not exceeding 30*l.*:

False entry or omission.

(3.) Every person who wilfully destroys or mutilates or renders illegible any entry in any official log book, or who wilfully makes or procures to be made, or assists in making any false or fraudulent entry or omission in any such log book, shall for each such offence be deemed guilty of a misdemeanor.

Entries in official logs to be received in evidence.

285. All entries made in any official log book as hereinbefore directed shall be received in evidence in any proceeding in any court of justice, subject to all just exceptions.

Official logs to be delivered to superintendent.

286. In the case of foreign-going ships the master shall, within forty-eight hours after the ship's arrival at her final port of destination in the United Kingdom, or upon the discharge of the crew, whichever first happens, deliver to the superintendent before whom the crew is discharged, the official log book of the voyage; and the master or owner of every home-trade ship, not exclusively employed in trading between ports on the coasts in the United Kingdom, shall within twenty-one days after the thirtieth day of June and the thirty-first day of December in every year, transmit or deliver to

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some superintendent in the United Kingdom the official log book for the preceding half year; and every master or owner who refuses or neglects to deliver his official log book as hereby required, shall be subject to the same consequences and liabilities to which he is hereby made subject for the non-delivery or the list of his crew hereinbefore mentioned.

Penalty.

Official logs to be sent home in case of transfer of ship,

287. If any ship ceases by reason of transfer of ownership or change of employment to fall within the definition of a foreign-going or a home-trade ship, the master or owner thereof shall, if such ship is then in the United Kingdom, within one month, and if she is elsewhere, within six months, deliver or transmit to the superintendent of the mercantile marine office at the port to which the ship belonged, the official log book (if any) duly made out to the time at which she ceased to be a foreign-going or home-trade ship, and in default shall for each offence incur a penalty not exceeding 10*l.*; and if any ship is lost or abandoned, the master or owner thereof shall, if practicable, and as soon as possible, deliver or transmit to the superintendent at the port to which the ship belonged, the official log book (if any) duly made out to the time of such loss or abandonment, and in default shall for each offence incur a penalty not exceeding 10*l.*

and in case of loss.

East Indies and Colonies.

Provisions of Act as applied by East Indian and colonial governments to their own ships, may be enforced throughout the empire.

288. If the Governor-General of India in council, or the respective legislative authorities in any British possession abroad, by any Acts, Ordinances, or other appropriate legal means, apply or adapt any of the provisions in the third part of this Act contained to any British ships registered at, trading with, or being at any place within their respective jurisdictions, and to the owners, masters, mates, and crews thereof, such provisions, when so applied and adapted as aforesaid, and as long as they remain in force, shall in respect of the ships and persons to which the same are applied be enforced, and penalties and punishments for the breach thereof shall be recovered and inflicted, throughout Her Majesty's dominions, in the same manner as if such provisions had been hereby so adopted and applied, and such penalties and punishments had been hereby expressly imposed.

289. Every Act, Ordinance, or other form of law to be

passed or promulgated by the Governor-General of India in council, or by any other legislative authority, in pursuance of this Act, shall respectively be subject to the same right of disallowance or repeal, and require the same sanction or other acts and formalities, and be subject to the same conditions in all respects as exist and are required in order to the validity of any other Act, Ordinance, or other form of law passed by such Governor-General in council or other legislative authority respectively.

East Indian and Colonial Acts to be subject to disallowance, and require sanction as in other cases.

290. If in any matter relating to any ship or to any person belonging to any ship there appears to be a conflict of laws, then, if there is in the third part of this Act any provision on the subject which is hereby expressly made to extend to such ship, the case shall be governed by such provision, and if there is no such provision the case shall be governed by the law of the place in which such ship is registered.

Conflict of laws.

The general rule in case of a conflict of laws is, that in regard to the rights and merits involved in actions, the law of the place where they originated is to govern (*y*). But whatever relates to the remedy and to the procedure to be adopted must be determined by the law of the country to which the appeal is made (*z*).

General rule.

PART IV.

SAFETY AND PREVENTION OF ACCIDENTS.

Application.

291. The Fourth Part of this Act shall apply to all British ships; and all foreign steam ships carrying passengers between places in the United Kingdom shall be subject to all the provisions contained in the Fourth Part of this Act, and likewise to the same provisions with respect to the certificates of the masters and mates thereof to which British steam ships are subject.

Application of Part IV. of Act.

(*y*) Story on the Conflict of Laws, § 558.
(*z*) *Don* v. *Lippman*, 5 Cl. & Fin. 13.

§ 291. The following new provisions of the "Merchant Shipping Act, 1876," do not apply to any vessel exclusively employed in trading in any inland waters of any British possession (*a*) :—

Unseaworthy Ships.

Sending unseaworthy ship to sea a misdemeanor.

39 & 40 Vict. c. 80, s. 4.—Every person who sends or attempts to send, or is party to sending or attempting to send a British ship to sea in such unseaworthy state that the life of any person is likely to be thereby endangered, shall be guilty of a misdemeanor, unless he proves that he used all reasonable means to insure her being sent to sea in a seaworthy state, or that her going to sea in such unseaworthy state was, under the circumstances, reasonable and justifiable; and, for the purpose of giving such proof, he may give evidence in the same manner as any other witness.

Every master of a British ship who knowingly takes the same to sea in such unseaworthy state that the life of any person is likely to be thereby endangered shall be guilty of a misdemeanor, unless he proves that her going to sea in such unseaworthy state was, under the circumstances, reasonable and justifiable, and for the purpose of giving such proof he may give evidence in the same manner as any other witness.

A prosecution under this section shall not be instituted except by or with the consent of the Board of Trade, or of the governor of the British possession in which such prosecution takes place.

A misdemeanor under this section shall not be punishable upon summary conviction.

This section creates a new liability for shipowners. The fact that the vessel goes to sea in an unseaworthy state, is of itself *primâ facie* a misdemeanor, and the owner or master have to rebut the presumption that it was owing to their fault that she went in that state. It would therefore seem, that whenever a ship is lost by some perils of the sea other than such as stranding or striking on rocks, the owner or master are liable to be prosecuted for a misdemeanor, unless they used all reasonable means to send her to sea in a seaworthy condition. It remains to be seen what circumstances will be considered "reasonable and justifiable" for sending a ship to sea in an unseaworthy state.

The provision with respect to a prosecution not being instituted without the consent of the Board of Trade does not apply to Scotland (see 39 & 40 Vict. c. 80, s. 41, under s. 2, p. 5).

Power to detain unsafe ships, and procedure for such detention.

39 & 40 Vict. c. 80, s. 6.—Where a British ship, being in any port of the United Kingdom, is, by reason of the defective condition of her hull, equipments, or machinery, or by reason of overloading or improper loading, unfit to proceed to sea without serious danger to human life, having regard to the

(*a*) 39 & 40 Vict. c. 80, s. 44.

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nature of the service for which she is intended, any such ship (hereinafter referred to as "unsafe") may be provisionally detained for the purpose of being surveyed, and either finally detained or released, as follows :

(1.) The Board of Trade, if they have reason to believe on complaint, or otherwise, that a British ship is unsafe, may provisionally order the detention of the ship for the purpose of being surveyed.

(2.) When a ship has been provisionally detained there shall be forthwith served on the master of the ship a written statement of the grounds of her detention, and the Board of Trade may, if they think fit, appoint some competent person or persons to survey the ship and report thereon to the Board.

(3.) The Board of Trade on receiving the report may either order the ship to be released or, if in their opinion the ship is unsafe, may order her to be finally detained, either absolutely, or until the performance of such conditions with respect to the execution of repairs or alterations, or the unloading or reloading of cargo, as the Board think necessary for the protection of human life, and may from time to time vary or add to any such order.

(4.) Before the order for final detention is made a copy of the report shall be served upon the master of the ship, and within seven days after such service the owner or master of the ship may appeal in the prescribed manner to the Court of Survey (hereinafter mentioned) for the port or district where the ship is detained.

(5.) Where a ship has been provisionally detained, the owner or master of the ship, at any time before the person appointed under this section to survey the ship makes such survey, may require that he shall be accompanied by such person as the owner or master may select out of the list of assessors for the Court of Survey (nominated as hereinafter mentioned), and in such case if the surveyor and assessor agree, the Board of Trade shall cause the ship to be detained or released accordingly, but if they differ, the Board of Trade may act as if the requisition had not been made, and the owner and master shall have the like appeal touching the report of the surveyor as is before provided by this section.

(6.) Where a ship has been provisionally detained, the Board of Trade may at any time, if they think it expedient, refer the matter to the Court of Survey for the port or district where the ship is detained.

(7.) The Board of Trade may at any time, if satisfied that a ship detained under this Act is not unsafe, order her to be released either upon or without any conditions.

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(8.) For the better execution of this section, the Board of Trade, with the consent of the Treasury, may from time to time appoint a sufficient number of fit officers, and may remove any of them.

(9.) Any officer so appointed (in this Act referred to as a detaining officer) shall have the same power as the Board of Trade have under this section of provisionally ordering the detention of a ship for the purpose of being surveyed, and of appointing a person or persons to survey her; and if he thinks that a ship so detained by him is not unsafe may order her to be released

(10.) A detaining officer shall forthwith report to the Board of Trade any order made by him for the detention or release of a ship.

Court of Survey.

Constitution of Court of Survey for appeals.

39 & 40 Vict. c. 80, s. 7.—A Court of Survey for a port or district shall consist of a judge sitting with two assessors.

The judge shall be such person as may be summoned for the case in accordance with the rules made under this Act out of a list (from time to time approved for the port or district by one of Her Majesty's principal Secretaries of State, in this Act referred to as a Secretary of State,) of wreck commissioners appointed under this Act, stipendiary or metropolitan police magistrates, judges of County Courts, and other fit persons; but in any special case in which the Board of Trade think it expedient to appoint a wreck commissioner, the judge shall be such wreck commissioner.

The assessors shall be persons of nautical engineering or other special skill and experience; one of them shall be appointed by the Board of Trade, either generally or in each case, and the other shall be summoned in accordance with the rules under this Act by the registrar of the Court, out of a list of persons periodically nominated for the purpose by the Local Marine Board of the port; or, if there is no such Board, by a body of local shipowners or merchants approved for the purpose by a Secretary of State, or, if there is no such list, shall be appointed by the judge; if a Secretary of State thinks fit at any time, on the recommendation of the Government of any British possession or any foreign state, to add any person or persons to any such list, such person or persons shall, until otherwise directed by the Secretary of State, be added to such list, and if there is no such list shall form such list.

The County Court Registrar, or such other fit person as a Secretary of State may from time to time appoint, shall be the Registrar of the Court, and shall, on receiving notice of an appeal or a reference from the Board of Trade, immediately summon the Court in the prescribed manner to meet forthwith.

The name of the Registrar and his office, together with the

rules made under this Act relating to the Court of Survey, shall be published in the prescribed manner. § 291.

Power and procedure of Court of Survey.

39 & 40 Vict. c. 80, s. 8.—With respect to the Court of Survey, the following provisions shall have effect:

(1.) The case shall be heard in open court;

(2.) The judge and each assessor may survey the ship, and shall have for the purposes of this Act all the powers of an inspector appointed by the Board of Trade under the Merchant Shipping Act, 1854 (*see s. 14, p. 12*);

(3.) The judge may appoint any competent person or persons to survey the ship and report thereon to the Court;

(4.) The judge shall have the same power as the Board of Trade have to order the ship to be released or finally detained, but unless one of the assessors concurs in an order for the detention of the ship, the ship shall be released;

(5.) The owner and master of the ship and any person appointed by the owner or master, and also any person appointed by the Board of Trade, may attend at any inspection or survey made in pursuance of this section;

(6.) The judge shall send to the Board of Trade the prescribed report and each assessor shall either sign the report or report to the Board of Trade the reasons for his dissent.

Rules for procedure of Court of Survey, &c.

39 & 40 Vict. c. 80, s. 9.—The Lord Chancellor of Great Britain may from time to time (with the consent of the Treasury so far as relates to fees), make, and when made revoke, alter, and add to general rules to carry into effect the provisions of this Act with respect to a Court of Survey, and in particular with respect to the summoning of and procedure before the Court, the requiring on an appeal security for costs and damages, the amount and application of fees, and the publication of the rules.

All such rules while in force shall have effect as if enacted in this Act, and the expression "prescribed" in the provisions of this Act relating to the detention of ships or Court of Survey means prescribed by such rules. (*The Rules are set out in the Appendix, pp.* 548-563.)

Liability of Board of Trade and shipowner for costs and damages.

39 & 40 Vict. c. 80, s. 10.—If it appears that there was not reasonable and probable cause by reason of the condition of the ship, or the act or default of the owner, for the provisional detention of the ship, the Board of Trade shall be liable to pay to the owner of the ship his costs of and incidental to the detention and survey of the ship, and also compensation for any loss or damage sustained by him by reason of the detention or survey.

If a ship is finally detained under this Act, or if it appears

§ 291. that a ship provisionally detained was, at the time of such detention, unsafe within the meaning of this Act, the owner of the ship shall be liable to pay to the Board of Trade their costs of and incidental to the detention and survey of the ship, and those costs shall without prejudice to any other remedy, be recoverable as salvage is recoverable.

For the purposes of this Act the costs of and incidental to any proceeding before a Court of Survey, and a reasonable amount in respect of the remuneration of the surveyor or officer of the Board of Trade shall be deemed to be part of the costs of the detention and survey of the ship, and any dispute as to the amount of costs under this Act may be referred to one of the masters or registrars of the Supreme Court of Judicature, who on request made to him for that purpose by the Board of Trade shall ascertain and certify the proper amount of such costs.

An action for any costs or compensation payable by the Board of Trade under this section may be brought against the secretary thereof by his official title as if he were a corporation sole; and if the cause of action arises in Ireland, it shall be lawful for any of the superior courts of common law in Ireland in which such action may be commenced to order that the summons or writ may be served on the Crown and Treasury Solicitor for Ireland, in such manner and on such terms as to extension of time and otherwise as to the Court shall seem fit, and that such service shall be deemed good and sufficient service of such summons or writ upon the Secretary of the Board of Trade.

Costs and compensation.

39 & 40 Vict. c. 80, (*part of*) s. 39.—There may be paid out of moneys provided by Parliament all costs and compensation payable by the Board of Trade in pursuance of this Act.

Power to require from complainant security for costs.

39 & 40 Vict. c. 80, s. 11.—Where a complaint is made to the Board of Trade or a detaining officer that a British ship is unsafe, the Board or officer may, if they or he think fit, require the complainant to give security to the satisfaction of the Board for the costs and compensation which he may become liable to pay as hereinafter mentioned.

Provided that where the complaint is made by one fourth, being not less than three, of the seamen belonging to the ship, and is not in the opinion of the Board or officer frivolous or vexatious, such security shall not be required, and the Board or officer shall, if the complaint is made in sufficient time before the sailing of the ship, take proper steps for ascertaining whether the ship ought to be detained under this Act.

Where a ship is detained in consequence of any complaint, and the circumstances are such that the Board of Trade are liable under this Act to pay to the owner of the ship any costs or compensation, the complainant shall be liable to pay to the Board of Trade all such costs and compensation as the Board

incur or are liable to pay in respect of the detention and survey of the ship. § 291.

Supplemental provisions as to detention of ship.

39 & 40 Vict. c. 80, s. 12.—(1.) A detaining officer shall have for the purpose of his duties under this Act the same powers as an inspector appointed by the Board of Trade under the Merchant Shipping Act, 1854. (*See p.* 12.)

(2.) An order for the detention of a ship, provisional or final, and an order varying the same, shall be served as soon as may be on the master of the ship.

(3.) When a ship has been detained under this Act she shall not be released by reason of her British register being subsequently closed.

(4.) For the purposes of a survey of a ship under this Act any person authorised to make the same may go on board the ship and inspect the same and every part thereof, and the machinery, equipments, and cargo, and may require the unloading or removal of any cargo, ballast, or tackle.

(5.) The provisions of the Merchant Shipping Act, 1854, with respect to persons who wilfully impede an inspector, or disobey a requisition or order of an inspector, shall apply as if those provisions were herein enacted, with the substitution for the inspector of any judge, assessor, officer, or surveyor who under this Act has the same powers as an inspector or has authority to survey a ship.

See s. 16, p. 13, and see s. 103, p. 94, as to who may detain vessels, and as to the penalties for proceeding to sea before being released. As to the load-line required to be marked on ships, see under s. 34, p. 30.

Foreign Ships Overloading.

Application to foreign ships of provisions as to detention.

39 & 40 Vict. c. 80, s. 13.—Where a foreign ship has taken on board all or any part of her cargo at a port in the United Kingdom, and is whilst at that port unsafe by reason of overloading or improper loading, the provisions of this Act with respect to the detention of ships shall apply to that foreign ship as if she were a British ship, with the following modifications:

(1.) A copy of the order for the provisional detention of the ship shall be forthwith served on the consular officer for the State to which the ship belongs at or nearest to the place where the ship is detained:

(2.) Where a ship has been provisionally detained, the consular officer, on the request of the owner or master of the ship, may require that the person appointed by the Board of Trade to survey the ship shall be accompanied by such person as the consular officer may select, and in such case if the surveyor and such person agree, the

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Board of Trade shall cause the ship to be detained or released accordingly, but if they differ, the Board of Trade may act as if the requisition had not been made, and the owner and master shall have the appeal to the Court of Survey touching the report of the surveyor which is before provided by this Act; and

(3.) Where the owner or master of the ship appeals to the Court of Survey, the consular officer, on the request of such owner or master, may appoint any competent person who shall be assessor in such case in lieu of the assessor who, if the ship were a British ship, would be appointed otherwise than by the Board of Trade.

Consular officer.

In this section the expression "consular officer" means any consul-general, vice-consul, consular agent, or other officer recognised by a Secretary of State as a consular officer of a foreign state.

Scientific Referees.

Reference in difficult cases to scientific persons.

39 & 40 Vict. c. 80, s. 15.—If the Board of Trade are of opinion that an appeal under this Act involves a question of construction or design or of scientific difficulty or important principle, they may refer the matter to such one or more out of a list of scientific referees from time to time approved by a Secretary of State, as may appear to possess the special qualifications necessary for the particular case, and may be selected by agreement between the Board of Trade and the appellant, or in default of any such agreement by a Secretary of State, and thereupon the appeal shall be determined by the referee or referees, instead of by the Court of Survey.

The Board of Trade, if the appellant in any appeal so require and give security to the satisfaction of the Board to pay the costs of and incidental to the reference, shall refer that appeal to a referee or referees so selected as aforesaid.

The referee or referees shall have the same powers as a judge of the Court of Survey.

Grain Cargoes.

Stowage of cargo of grain, &c.

39 & 40 Vict. c. 80, s. 22.—No cargo of which more than one third consists of any kind of grain, corn, rice, paddy, pulse, seeds, nuts, or nut kernels, hereinafter referred to as "grain cargo," shall be carried on board any British ship, unless such grain cargo be contained in bags, sacks, or barrels, or secured from shifting by boards, bulkheads, or otherwise.

If the managing owner, or master of any British ship or any agent of such owner who is charged with the loading of the ship or the sending her to sea knowingly allows any grain cargo or part of a grain cargo to be shipped therein for carriage con-

trary to the provisions of this section, he shall for every such offence incur a penalty not exceeding three hundred pounds, to be recovered upon summary conviction. § 291.

Deck Cargoes (b).

Space occupied by.

39 & 40 Vict. c. 80, s. 23.—If any ship, British or foreign, other than home-trade ships as defined by the "Merchant Shipping Act, 1854," (*see p.* 4), carries as deck cargo, that is to say, in any uncovered space upon deck, or in any covered space not included in the cubical contents forming the ship's registered tonnage, timber, stores, or other goods, all dues payable on the ship's tonnage shall be payable as if there were added to the ship's registered tonnage the tonnage of the space occupied by such goods at the time at which such dues become payable.

The space so occupied shall be deemed to be the space limited by the area occupied by the goods and by straight lines inclosing a rectangular space sufficient to include the goods.

The tonnage of such space shall be ascertained by an officer of the Board of Trade or of customs, in manner directed by subsection four of section twenty-one of the "Merchant Shipping Act, 1854," (*see p.* 17), and when so ascertained shall be entered by him in the ship's official log book, and also in a memorandum which he shall deliver to the master, and the master shall, when the said dues are demanded produce such memorandum in like manner as if it were the certificate of registry, or, in the case of a foreign ship, the document equivalent to a certificate of registry, and in default shall be liable to the same penalty as if he had failed to produce the said certificate or document. (*See. s.* 19, *p.* 16.)

Penalty for carrying deckloads of timber in winter.

39 & 40 Vict. c. 80, s. 24.—After the first day of November one thousand eight hundred and seventy six, if a ship, British or foreign, arrives between the last day of October and the sixteenth day of April in any year at any port in the United Kingdom from any port out of the United Kingdom, carrying as deck cargo, that is to say, in any uncovered space upon deck, or in any covered space not included in the cubical contents forming the ship's registered tonnage, any wood goods coming within the following descriptions ; that is to say,

(*a.*) Any square, round, waney, or other timber, or any pitch pine, mahogany, oak, teak, or other heavy wood goods whatever ; or

(*b.*) Any more than five spare spars or store spars, whether or not made, dressed, and finally prepared for use ; or

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(*b*) These provisions relating to deck cargoes do not apply to deck cargo carried by a ship while engaged in the coasting trade of any British possession. 39 & 40 Vict. c. 80, s. 44.

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(*c.*) Any deals, battens, or other light wood goods of any description to a height exceeding three feet above the deck;

the master of the ship, and also the owner, if he is privy to the offence, shall be liable to a penalty not exceeding five pounds for every hundred cubic feet of wood goods carried in contravention of this section, and such penalty may be recovered by action or on indictment or to an amount not exceeding one hundred pounds (whatever may be the maximum penalty recoverable) on summary conviction.

Provided that a master or owner shall not be liable to any penalty under this section—

(1.) In respect of any wood goods which the master has considered it necessary to place or keep on deck during the voyage on account of the springing of any leak, or of any other damage to the ship received or apprehended; or

(2.) If he proves that the ship sailed from the port at which the wood goods were loaded as deck cargo at such time before the last day of October as allowed a sufficient interval according to the ordinary duration of the voyage for the ship to arrive before that day at the said port in the United Kingdom, but was prevented from so arriving by stress of weather or circumstances beyond his control; or

(3.) If he proves that the ship sailed from the port at which the wood goods were loaded as deck cargo at such time before the sixteenth day of April as allowed a reasonable interval according to the ordinary duration of the voyage for the ship to arrive after that day at the said port in the United Kingdom, and by reason of an exceptionally favourable voyage arrived before that day.

Provided further, that nothing in this section shall affect any ship not bound to any port in the United Kingdom which comes into any port of the United Kingdom under stress of weather, or for repairs, or for any other purpose than the delivery of her cargo.

As to the load-line to be marked on ships that is required by the "Merchant Shipping Act, 1876," see under s. 34, p. 30.

Ship's Draught of Water.

Ship's draught of water to be recorded.

34 & 35 Vict. c. 110, s. 5.—The Board of Trade may in any case or class of cases in which they think it expedient so to do, direct any person appointed by them for the purpose to record in such manner and with such particulars as the Board of Trade direct the draught of water of any sea-going ship as shown on

the scale of feet in her stem and on her stern post upon her leaving any dock, wharf, port, or harbour, for the purpose of proceeding to sea; and such person shall thereupon keep such record, and shall from time to time forward the same or a copy thereof to the Board of Trade; and such record or any copy thereof if produced by or out of the custody of the Board of Trade shall be admissible in evidence of the draught of water of the ship at the time specified in the record. The master of every British sea-going ship shall, upon her leaving any dock, wharf, port, or harbour, for the purpose of proceeding to sea, record her draught of water in the official log-book (if any) and shall produce such record to any principal officer of customs whenever required by him so to do, or in default of such production shall incur a penalty not exceeding twenty pounds.

Particulars to be entered in record of draught of water.

36 & 37 Vict. c. 85, s. 4.—The record of the draught of water of any sea-going ship required under section five of the "Merchant Shipping Act, 1871," shall, in addition to the particulars thereby required specify the extent of her clear side in feet and inches.

The term "clear side" means the height from the water to the upper side of the plank of the deck from which the depth of hold as stated in the register is measured and the measurement of the clear side is to be taken at the lowest part of the side.

Every master of a sea-going ship shall, upon the request of any person appointed to record the ship's draught of water, permit such person to enter the ship and to make such inspections and take such measurements as may be requisite for the purpose of such record, and any master who fails so to do, or impedes or suffers any one under his control to impede any person so appointed in the execution of his duty, shall for each offence incur a penalty not exceeding five pounds.

Inspection of Chain Cables.

Cables and anchors of alleged unseaworthy ships to be tested.

37 & 38 Vict. c. 51 (*the* "*Chain Cables and Anchors Act*, 1874"), s. 5.—Whenever any ship is surveyed or detained by the Board of Trade under the "Merchant Shipping Act, 1873," on the ground of alleged unseaworthiness, the Board may direct an inquiry into the condition of the cables and anchors, and if they have not been tested according to the "Chain Cables and Anchors Acts, 1864 to 1874," may make such further order as they think requisite previous to her release.

Boats for Sea-going Ships.

Rules as to boats and life buoys.

292. The following rules shall be observed with respect to boats and life buoys; (that is to say,)

(1.) No decked ship (except ships used solely as steam tugs and ships engaged in the whale fishery) shall proceed to

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sea from any place in the United Kingdom, unless she is provided, according to her tonnage, with boats duly supplied with all requisites for use, and not being fewer in number nor less in their cubic contents than the boats the number and cubic contents of which are specified in the table marked S. in the schedule hereto for the class to which such ship belongs:

(2.) No ship carrying more than ten passengers shall proceed to sea from any place in the United Kingdom, unless, in addition to the boats hereinbefore required, she is also provided with a life boat furnished with all requisites for use, or unless one of her boats hereinbefore required is rendered buoyant after the manner of a life boat:

(3.) No such ship as last aforesaid shall proceed to sea unless she is also provided with two life buoys:

And such boats and life buoys shall be kept so as to be at all times fit and ready for use: Provided, that the enactments with respect to boats and life buoys herein contained shall not apply in any case in which a certificate has been duly obtained under the 27th section of the "Passengers Act, 1855." (*See p.* 492).

Power for Board of Trade to vary requirements as to boats.

36 & 37 Vict. c. 85, (*part of*) s. 15.—In the case of any ship surveyed under the fourth part of the Merchant Shipping Act, 1854, the Board of Trade may at the request of the owner authorise the reduction of the number and the variations of the dimensions of the boats required for the ship by section 292 of that Act, and also the substitution of rafts or other appliances for saving life for any such boats, so nevertheless that the boats so reduced or varied, and the rafts or other appliances so substituted be sufficient for the persons carried on board the ship.

TABLE S.

Number and Dimensions of Boats with which Seagoing Ships are to be provided.

Registered Tonnage.		Column 1. To be carried by Sailing Ships and Steam Ships.								Column 2. To be carried by Sailing Ships, and by Steam Ships, when they do not carry the Boats in Col. 3.				Column 3. To be carried by Steam Ships which do not carry the Boat in Col. 2.								Total Number of Boats.	
		Boats.				Boats.				Launches.				Boats.				Life-boats.					
Sailing Ships.	Steam Ships.	Number.	Length.	Breadth.	Depth.	Number.	Length.	Breadth.	Depth.	Number.	Length.	Breadth.	Depth.	Number.	Length.	Breadth.	Depth.	Number.	Length.	Breadth.	Depth.	Sailing Ships.	Steam Ships.
Tons.	Tons.		ft.	ft. in.	ft. in.		ft.	ft. in.	ft. in.		ft.	ft. in.	ft. in.		ft.	ft. in.	ft. in.		ft.	ft. in.	ft. in.		
—	1000 and upwards	1	18	5 6	2 3	2	24	5 6	2 6	1	27	8 6	3 8	2	22	5 6	2 6	2	28	8 6	3 6	—	7
—	800 to 1000	1	18	5 6	2 3	2	26	6 6	2 8	1	26	8 0	3 8	2	22	5 6	2 6	—	—	—	—	—	4 or 5
800 and upwards	500 to 800	1	18	5 6	2 3	2	24	5 6	2 6	1	26	8 0	3 8	2	22	5 6	2 6	—	—	—	—	4	4 or 5
600 to 800	360 to 500	1	16	5 6	2 3	2	24	5 6	2 6	1	25	7 0	3 6	2	22	5 6	2 6	—	—	—	—	4	4 or 5
400 to 600	240 to 360	1	16	5 6	2 3	1	22	5 6	2 5	1	22	6 6	3 3	2	22	5 6	2 6	—	—	—	—	3	3 or 4
200 to 400	120 to 240	1	14	5 0	2 2	—	—	—	—	1	20	6 0	3 0	2	22	5 6	2 6	—	—	—	—	2	2 or 3
100 to 200	60 to 120	1	14	5 0	2 2	—	—	—	—	1	16	5 6	2 9	2	18	5 6	2 4	—	—	—	—	2	2 or 3
Under 100	Under 60	1	14	5 0	2 2	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	1	1

as the case may be.

Note.—In sailing ships carrying the number of boats above specified, and steam ships carrying the larger of the two numbers above specified, the boats are to be considered sufficient, if their aggregate cubic contents are equal to the aggregate cubic contents of the boats specified.

In steam ships carrying the smaller of the two numbers above specified, one of the boats must be a launch of the capacity specified in Col. 2.

In sailing ships of 200 tons burden and under, not carrying passengers, a dingy may be substituted for the boat in Col. 1.

In sailing ships of 150 tons burden and under, not carrying passengers, a substantial boat of capacity sufficient to carry the crew may be substituted for those above specified.

In all steam ships, two paddle-box boats may be substituted for any two of the boats in Col. 3.

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Penalties on masters and owners, &c. neglecting to provide boats and life buoys.

293. In any of the following cases, (that is to say,)

(1.) If any ship hereinbefore required to be provided with boats or life buoys proceeds to sea without being so provided therewith, or if any of such boats or life buoys are lost or rendered unfit for service in the course of the voyage through the wilful fault or negligence of the owner or master; or,

(2.) If, in case of any of such boats or life buoys being accidentally lost or injured in the course of the voyage, the master wilfully neglects to replace or repair the same on the first opportunity; or,

(3.) If such boats and life buoys are not kept so as to be at all times fit and ready for use;

Then if the owner appears to be in fault he shall incur a penalty not exceeding 100*l.*, and if the master appears to be in fault he shall incur a penalty not exceeding 50*l.*

36 & 37 Vict. c. 85, (*part of*) s. 15.—Section 293 of the Merchant Shipping Act, 1854, shall extend to any such rafts or appliances in the same manner as if they were boats.

Officers of customs not to clear ships not complying with the above provisions.

294. No officer of customs shall grant a clearance or transire for any ship hereinbefore required to be provided with boats or with life buoys unless the same is duly so provided; and if any such ship attempts to go to sea without such clearance or transire any such officer may detain her until she is so provided.

For the life boats, compasses, fire-engines, &c., required to be carried by passenger ships, see the "Passengers Act, 1855," s. 27, p. 492.

Signals of Distress.

Signals of distress.

36 & 37 Vict. c. 85, s. 18.—The signals specified in the first schedule to this Act shall be deemed to be signals of distress.

Any master of a vessel who uses or displays or causes or permits any person under his authority to use or display any of the said signals, except in the case of a vessel being in distress, shall be liable to pay compensation for any labour undertaken, risk incurred, or loss sustained, in consequence of such signal having been supposed to be a signal of distress, and such compensation may, without prejudice to any other remedy, be recovered in the same manner in which salvage is recoverable.

SCHEDULE I.

Signals of Distress.

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In the Daytime.—The following signals numbered 1, 2, and 3, when used or displayed together or separately, shall be deemed to be signals of distress in the daytime :— Signals in the daytime.

1. A gun fired at intervals of about a minute ;
2. The international code signal of distress indicated by N. C. ;
3. The distant signal, consisting of a square flag having either above or below it a ball, or anything resembling a ball.

At Night.—The following signals, numbered 1, 2, and 3, when used or displayed together or separately, shall be deemed to be signals of distress at night :— Signals at night.

1. A gun fired at intervals of about a minute ;
2. Flames on the ship (as from a burning tar barrel, oil barrel, &c.) ;
3. Rockets or shells, of any colour or description, fired one at a time at short intervals.

Every sea-going passenger steamer, and every emigrant ship, must be provided with the means of making these signals, and with a supply of lights inextinguishable in water. There is a penalty not exceeding 50*l.* for default in this respect (*c*).

36 & 37 Vict. c. 85, s. 20.—Her Majesty may from time to time, by Order in Council, repeal or alter rules as to signals contained in the schedules to this Act, or make new rules in addition thereto or in substitution therefor, and any alterations in or additions to such rules made in manner aforesaid, shall be of the same force as the rules in the said schedules. Power to alter rules as to signals.

Private Signals.

36 & 37 Vict. c. 85, s. 21.—Any shipowner who is desirous of using for the purposes of a private code any rockets, lights, or other similar signals, may register such signals with the Board of Trade, and the Board shall give public notice of the signals so registered in such manner as they may think requisite for preventing such signals from being mistaken for signals of distress or signals for pilots. Private signals.

The Board may refuse to register any signals which in their opinion cannot easily be distinguished from signals of distress or signals for pilots.

When any signal has been so registered the use or display thereof by any person acting under the authority of the shipowner in whose name it is registered, shall not subject any

(*c*) See 39 & 40 Vict. c. 80, s. 21, under s. 27 of the "Passengers' Act, 1855," p. 493.

§ 294. person to any of the penalties or liabilities by this Act imposed upon persons using or displaying signals improperly.

COLLISIONS.

Liability for collisions.

Ships are held liable for damage occasioned by collision, either on account of the culpable neglect or complicity, direct or indirect, of their owners, or on account of the negligence, unskilfulness or carelessness of those employed in their control and navigation. When employed in navigation ships must be kept seaworthy, and be well manned and equipped for the voyage, and where this is not done and a collision ensues between such ship and one without fault in that respect, the owners of the deficient vessel cannot escape responsibility if the deficiency caused or contributed to the disaster (*a*).

In what way collisions may be brought about.

"There are four possibilities," said Lord Stowell (*b*), "under which an accident of this sort may occur. In the first place, it may happen without blame being imputable to either party; as where the loss is occasioned by a storm or any other *vis major*. In that case the misfortune must be borne by the party on whom it happens to light; the other not being responsible to him in any degree. Secondly, a misfortune of this kind may arise where both parties are to blame; where there has been a want of due diligence or skill on both sides. In such a case the rule of law is that the loss must be apportioned between them, as having been occasioned by the fault of both of them. Thirdly, it may happen by the misconduct of the suffering party only; and then the rule is, that the sufferer must bear his own burden. Lastly, it may have been the fault of the ship which ran the other down, and in this case the injured party would be entitled to an entire compensation from the other."

When neither ship is in fault.

When the evidence has established that the collision was the result of inevitable accident, no liability can of course attach to either party, and each must bear his own loss (*c*). In order to escape liability it is not necessary in every case to prove that the accident was inevitable. It only becomes necessary to prove the collision to have been the result of a *vis major*, when a *primâ facie* case of negligence has been made out against a vessel (*d*).

Inevitable accident.

"Inevitable accident," said Dr. Lushington, "is that which a party charged with an offence could not possibly prevent by the exercise of ordinary care, caution, and maritime skill. It is not enough to show that the accident could not be prevented by the party at the very moment it occurred, but the question is what previous measures have been adopted to render the occurrence of it less probable" (*e*). The same learned Judge also defined inevitable accident to be "where one vessel doing a lawful act without any intention of harm, and using

(*a*) *The Continental*, 14 Wallace (Amer. Rep.), 354. *The Glannibanta*, 1 P. D. (C. A.) 291.

(*b*) *The Woodrop Sims*, 2 Dods. Ad. 85.

(*c*) *The William Lindsay*, L. R. 5 C. P. 338; *Harris* v. *Anderson*, 14 C. B. N. S. 499; Parsons on Shipping (Ed. 1869), i. 525; *Union Steamship Co.* v. *N. Y. & Va. Steamship Co.*, 24 Howard (Amer. Rep.), 313.

(*d*) *The Marpesia*, L. R. 4 P. C. 219; *The Bolina*, 3 Notes of Cas. 210.

(*e*) *The Uhla*, 3 Mar. Law Cas. 148; 19 L. T. N. S. 89; *The Virgil*, 2 W. Rob. 205.

§ 294.

proper precautions to prevent danger, unfortunately happens to run into another vessel" (*f*). The master is bound to take all reasonable precautions to prevent his ship doing damage to others, but it would be going too far to hold his owners to be responsible because he may have omitted some possible precaution which the event suggests he might have resorted to. The true rule is that he must take all such precautions as a man of ordinary prudence and skill, exercising reasonable foresight, would use to avert danger in the circumstances in which he may happen to be placed (*g*).

The master must take reasonable precautions.

Both the English and American Courts have adopted the rule that when a collision has been brought about by the fault of both ships the loss shall be equally apportioned between them (*h*); and in a recent American case in which both ships were to blame, but only one of them received any injuries by the collision, the uninjured vessel was condemned to pay half the damage suffered by the other (*i*).

When both ships are in fault.

The Court of Admiralty and the Common Law Courts used formerly to be guided by different rules for damages when both ships were in fault. But it is now enacted that "In any cause or proceeding for damages arising out of a collision between two ships, if both ships shall be found to have been in fault, the rules hitherto in force in the Court of Admiralty so far as they have been at variance with the rules in force in the Courts of Common Law, shall prevail" (*k*). Formerly if the plaintiff's ship had been guilty of contributory negligence, he had no remedy at the Common Law (*l*). If the evidence is so conflicting that the Court cannot determine upon whom the blame rests, it will be guided by the probabilities of the respective cases set up, and sometimes will dismiss both suits (*m*).

Admiralty to supersede Common Law rule.

Conflicting evidence.

When the collision has been brought about through the fault of one ship alone, the party in fault must suffer his own loss, and compensate the other for the damage done (*n*). The burden, however, of proving negligence rests on the party claiming compensation (*o*), and he must also show that due care was taken on his part (*p*.)

When one ship is in fault.

If a wrong-doing vessel causes damage to another she is liable for the damage even though no actual collision takes place (*q*). And if one ship,

When there is no actual collision.

(*f*) *The Europa*, 14 Jur. 629.

(*g*) *The William Lindsay*, L. R. 5 P. C. 343; *The Calcutta*, 21 L. T. N. S. (P. C.) 768.

(*h*) *Vaux* v. *Sheffer*, *The Immaganda Sara Clasina*, 8 Moo. P. C. 75; *The Anne Johanne*, 2 Stuart, Vice Ad. Rep. (Quebec), 43; *The Schooner Catherine* v. *Dickinson*, 17 Howard (Amer. Rep.), 170; *Cushing* v. *The John Frazer*, 21 Howard (Amer. Rep.), 184.

(*i*) *The Sapphire*, 18 Wallace (Amer. Rep.), 51.

(*k*) The Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 25, subs. (9).

(*l*) *Dowell* v. *Gen. Steam Navig. Co.*, 5 E. & B. 195; unless his own negligence was too remote, see *Davies* v. *Mann*, 10 M. & W. 546.

(*m*) *The Mary Stewart*, 2 W. Rob. 244; *The Maid of Auckland*, 6 Notes of Cas. 240; *The Ailsa*, 2 Stuart, Vice Ad. Rep. (Quebec), 38; *The Comet*, 1 Abbot (Amer. Rep.), 451.

(*n*) Parsons on Shipping (Ed. 1869), i. 525; *The Catherine of Dover*, 2 Hagg. Ad. 154.

(*o*) *The City of London*, Swa. 245, 300; *The Linda*, Swa. 307.

(*p*) *The Virgil*, 2 W. Rob. 201; *Carsley* v. *White*, 38 Mass. (Amer. Rep.), 254.

(*q*) *The Industrie*, L. R. 3 A. & E. 303.

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by the improper navigation of a second ship, is compelled to alter her course, and so does damage to a third ship, the ship which compelled the alteration of course, is liable for the damage; and that liability remains if the damaged ship was not actually negligent, even though by taking another course she might have avoided the collision (*r*).

Queen's ships.

The Commander of one of the Queen's ships may be condemned in damages if the collision is brought about by his fault (*s*).

Assessment of damages.

When one vessel has been held to blame for a collision, she is bound to make full compensation to the ship she has injured (subject to the owner's statutory limitation of liability, see Part IX., p. 424). *Restitutio in integrum* is the leading maxim (*t*). All the direct consequences of the accident are to be taken into consideration, as the loss of freight, detention, expense, and so on (*u*); but the defendant is not liable for such damages as might have been avoided by the exercise of ordinary nautical skill and diligence *after* the collision on the part of those in charge of the plaintiff's ship (*x*).

Damage gives a maritime lien.

Damage imposes a maritime lien upon the ship that has caused it, and this lien takes precedence of liens *ex contractu*, such as bottomry wages, pilotage, &c. (*y*), but in no case extends to the cargo (*z*). The usual remedy is to proceed *in rem*, that is against the ship itself, and if this course is pursued, the proceedings are regulated by the practice which prevailed in the Admiralty Court immediately before the passing of the Judicature Act, 1875 (*a*). An action *in personam* may be brought against the owner of the wrong-doing vessel himself (*b*). But when both remedies exist, if a person has resorted to one of them and does not thereby get fully satisfied, he is not precluded from resorting to the other (*c*). (See further as to maritime liens, Part IX., p. 417.)

Appeals.

In collision causes when the Court below has had the opportunity of seeing the witnesses, and has come to a decision on the evidence, the Court of Appeal is very reluctant to reverse such a decision (*d*). But when the Court below has not founded its judgment on the credibility of the witnesses, but on inferences from the evidence drawn by the judge, his decision will be reversed without such great reluctance if the Court of Appeal draw a different conclusion from the evidence (*e*).

Jurisdiction and Law applicable to Collisions.

Most countries now

Most countries possessing any considerable mercantile marine, have now adopted the same rules of navigation (see p. 263); and when

(*r*) *The Sisters*, 1. P. D. (C. A.), 117.
(*s*) *The Volcano*, 2 W. Rob. 337; *The Birkenhead*, 3 W. Rob. 75.
(*t*) Williams' & Bruce Admiralty Practice (Ed. 1868), 77; *The Clyde*, Swa. 24; *The St. Olaf*, L. R. 2 A. & E. 360.
(*u*) *The Mellona*, 3 W. Rob. 7; *The Narragansett*, Olcott (Amer. Rep.), 246; *The Morning Star*, 4 Biss. (Amer. Rep.), 62.
(*x*) *The Flying Fish*, Br. & L. 436.
(*y*) *The Bold Buccleugh*, 7 Moo. P. C. 267; *The Benares*, 7 No. of Cas. Suppl. L.
(*z*) *The Victor*, Lush. 72; *The Duchesse de Brabant*, Swa. 264.
(*a*) *The Polymede*, 1 P. D. 121.
(*b*) *The Volant*, 1 W. Rob. 383; *The Zephyr*, 11 L. T. N. S. 351.
(*c*) *The Orient*, L. R. 3 P. C. 696.
(*d*) *The Sisters*, 1 P. D. (C. A.) 117; 34 L. T. N. S. 338.
(*e*) *The Glannibanta*, 1 P. D. (C. A.) 283.

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have the same rules of the sea.

Remedies determined by *lex fori*.

Rights and merits by *lex loci*.

A wrong must be actionable in both places.

the case is one within the rules there will be no difficulty in determining by what law it is to be decided. But it may happen that the case is one not contemplated in the rules, or that the foreign vessel is one not bound by them.

The general rule respecting all remedies seems well settled "that whatever relates to the remedy to be enforced, must be determined by the *lex fori*, the law of the country to the tribunals of which the appeal is made" (*f*). But in regard to the rights and merits involved in actions, the law of the place where they originated, is to govern (*g*). "The civil liability," said Willes, J., in a recent case (*h*), "arising out of a wrong derives its birth from the law of the place, and its character is determined by that law." But in order that a wrong committed abroad should give a remedy in England, it is essential that the wrong should be of such a character, that it would have given a cause of action if committed in England (*i*). Lord Justice Mellish recently said, "The law respecting personal injuries and respecting wrongs to personal property appears to me to be perfectly settled, that no action can be maintained in the Courts of this country on account of a wrongful act, either to a person or to personal property committed within the jurisdiction of a foreign country, unless the act is wrongful by the law of the country where it is committed, and also wrongful by the law of this country" (*k*). Thus, an English ship was compelled to take a pilot on board off Flushing, and through the negligence of the pilot a collision occurred. By the Belgian law the owners, though compelled to employ a pilot, are liable for his acts, whereas in England, when pilotage is compulsory, the pilot alone is responsible. In a cause of collision instituted against the British ship in this country, it was held that the party claiming reparation in a British Court was not entitled to the benefit of the foreign law that made the owner responsible against the provisions of English statute law, by which no such liability as provided by the Belgian law existed. An English Court will not enforce a foreign municipal law, and give a remedy in the shape of damages in respect of an act which according to its own principles, imposes no liability on the person from whom the damages are claimed (*l*). And on the other hand where a cause of damage was instituted in this country against an English ship for damaging a pier in Spain, and it was alleged that by the law of Spain the owner of the ship was not responsible for such an act of the master, it was held, that if the owner was not responsible in Spain he could not be made so in England, even though he would have been liable had the damage been committed in England (*m*).

(*f*) Per Lord Brougham in *Don* v. *Lippmann*, 5 Cl. & F. 13; *British Linen Co.* v. *Drummond*, 10 B. & C. 903; *De la Vega* v. *Vianna*, 1 B. & Ad. 284.

(*g*) Story on Conflict of Laws, § 558, and authorities there cited.

(*h*) *Phillips* v. *Eyre*, L. R. 6 Q. B. 28.

(*i*) *The Halley*, L. R. 2 P. C. 193.

(*k*) *The M. Moxham*, 1 P. D. (C. A.) 111; *Phillips* v. *Eyre*, L. R. 6 Q. B. 28.

(*l*) *The Halley*, L. R. 2 P. C. 194. See also *Smith* v. *Condry*, 1 Howard (Amer. Rep.), 28, where an American ship, compelled to employ a pilot at Liverpool, was pronounced not liable for damage done while in his charge.

(*m*) *The M. Moxham*, 1 P. D. (C. A.) 107.

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Wrongs on the high seas.

The same principles apply to torts committed on the high seas. No liability will attach in this country unless the Act gives a remedy by English law, and also by the laws of the sea in force at the place where it was committed (*n*). When the case does not fall within the rules, or the foreigner is not bound by them, and the British ship is in the wrong according to British law, but in the right by the maritime law of the locality, she will then be free from liability, since as the foreigner could not himself be bound by British law, he cannot avail himself of the fact that the British ship has violated that law (*o*).

Admiralty Court jurisdiction.

By 3 & 4 Vict. c. 65, s. 6, jurisdiction was given to the Admiralty Court to decide all claims and demands whatsoever in the nature of damage received by any ship or sea-going vessel, and to enforce the payment thereof whether such ship or vessel may have been within the body of a country, or upon the high seas at the time when the damge was received in respect of which such claim is made. And the Admiralty Court Act, 1861 (*p*), enacts in general terms that the Court shall have jurisdiction over any claim for damage done by any ship. The Court was therefore empowered to try any causes whatever of such a description, even if all the parties to it were foreigners, and the cause of action arose out of the jurisdiction. However, in deciding causes of the latter kind, the Court must be guided by the rules of law to which both parties were subject when the damage was committed, and not by the Merchant Shipping Acts. It is a general rule in construing acts of parliament that the legislature must be presumed to have intended by its enactments to regulate the rights which should subsist between its own subjects, and not to affect the rights of foreigners unless the contrary be expressed or implied from the absolute necessity of the case. In a cause of collision that occurred on the high seas between two American vessels before America had adopted the same rules of the sea as this country, and in which an application was made to the Court of Chancery, it was intimated that upon proof of what the American law was, it would be administered between the parties (*q*).

Construction of Acts of Parliament.

Lights and Fog Signals, Meeting and Passing.

Enactment of regulations concerning lights, fog signals, and sailing rules in schedule, Table (C.)

Sections 295 to 300 *inclusive are repealed by* 25 & 26 Vict. c. 63, s. 2.

25 & 26 Vict. c. 63, s. 25.—On and after the first day of June, one thousand eight hundred and sixty three, or such later day as may be fixed for the purpose by Order in Council, the regulations contained in the Table marked (C) in the schedule hereto shall come into operation and be of the same force as if they were enacted in the body of this Act; but Her Majesty may from time to time, on the joint recommendation

(*n*) *Williams* v. *Gutch, The Chancellor*, 14 Moo. P. C. 202.
(*o*) *The Zollverein*, Swa. 96; *The Saxonia*, Lush. 410.
(*p*) 24 Vict. c. 10, s. 7.
(*q*) *Cope* v. *Doherty*, 4 K. & J. 367; 2 De G. & J. 614; *One Hundred and Ninety-four Shawls*, 1 Abb. Ad. (Amer. Rep.), 317; *The Bee*, Ware (Amer. Rep.), 332.

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of the Admiralty and the Board of Trade, by Order in Council, annul or modify any of the said regulations, or make new regulations in addition thereto or in substitution therefor; and any alterations in or additions to such regulations made in manner aforesaid shall be of the same force as the regulations in the said schedule.

TABLE (C) (referred to in 25 & 26 Vict. c. 63).

The original rules contained in Table (*C*) were revoked and reissued in a slightly modified form, as below, by Order in Council, dated 9th January, 1863 (*r*).

Countries that have adopted the Regulations.

AUSTRIA.	ITALY.
ARGENTINE REPUBLIC.	MOROCCO.
BELGIUM.	NETHERLANDS.
BRAZIL.	NORWAY.
CHILE.	PERU.
DENMARK PROPER.	PORTUGAL.
EQUATOR (Republic of the).	RUSSIA.
FRANCE.	SPAIN,
GERMAN EMPIRE.	SWEDEN.
GREAT BRITAIN.	TURKEY.
GREECE.	UNITED STATES, Sea-going Ships.
HAWAIIAN ISLANDS.	UNITED STATES, Inland Waters.
HAYTI.	URUGUAY.

These regulations have now become the laws of the sea, and the Supreme Court of the United States has taken judicial cognizance of the fact that almost all nations have adopted them (*s*).

REGULATIONS FOR PREVENTING COLLISIONS AT SEA.

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(*r*) See State Papers, Vol. LIII. p. 340.
(*s*) *The Scotia*, 14 Wallace (Amer. Rep.), 171.

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XVIII. Construction of Articles XII., XIV. XV., and XVII.
XIX. Proviso to save special cases.
XX. No ship, under any circstances, to neglect proper precautions.

Preliminary.

Art. I.—In the following rules every steam ship which is under sail and not under steam, is to be considered a sailing ship; and every steam ship which is under steam, whether under sail or not, is to be considered a ship under steam.

Rules concerning Lights.

Art. II.—The lights mentioned in the following Articles, numbered III., IV., V., VI., VII., VIII., and IX., and no others, shall be carried in all weathers, from sunset to sunrise.

Maritime law was doubtful as to lights.

It was formerly an open question whether by the maritime law a ship was bound to carry lights, and whether she was negligent if she omitted to do so (*t*). These rules have distinctly settled the question as far as all who are bound by them are concerned.

Burden of proof.

The fact that the night is bright and fine does not relieve a ship from the necessity of complying with the rules concerning lights (*u*). And if she does not exhibit the proper lights and a collision ensues, the presumption then is that the collision was brought about by the absence of the proper lights, and the ship not complying with the regulations must prove that the accident was in no way attributable to her default (*x*).

Insufficient lights.

If lights are burning so dimly as not to fulfil the purpose and object for which they were required, they will not be regarded as constituting a compliance with the regulations (*y*). However, neglect on the part of one ship to shew the proper lights does not absolve another ship from the obligation to observe the usual laws of navigation, or such reasonable precaution as the circumstances call for (*z*).

Dumb barges.

It seems that dumb barges, lighters, and other similar craft employed only in rivers, and not being "ships" within the meaning of this Act (see s. 2, p. 4), are not bound by these regulations to carry lights (*a*).

(*t*) Parsons on Shipping (Ed. 1869), i. 549.

(*u*) *The City of London*, Swa. 245, 300.

(*x*) *The Calla*, Swa. 465; *The Aurora*, Lush, 327; *The Fenham*, L. R. 3 P. C. 216. See also 36 & 37 Vict. c. 85, s. 17, *post*, p. 280.

(*y*) *Chamberlain* v. *Ward*, 21 Howard (Amer. Rep.), 566.

(*z*) *Rogers* v. *Steamer St. Charles*, 19 Howard (Amer. Rep.), 108; *The Empire State*, 2 Bissel (Amer. Rep.), 216; *Silliman* v. *Lewis*, 49 New York (Amer. Rep.), 379; *The Continental*, 14 Wallace (Amer. Rep.), 345.

(*a*) *The S. C. Butler*, L. R. 4 A. & E. 238; *The Owen Wallis*, Ib. 175. The rules of the Thames make no special provision for lights for such vessels. See Order in Council, 5th February, 1872, London Gazette, 6th February, 1872.

Lights for Steam Ships. **Art. III.**

Art. III.—Seagoing steam ships when under weigh shall carry :

(*a.*) *At the foremast head*, a bright white light so fixed as to show an uniform and unbroken light over an arc of the horizon of twenty points of the compass, so fixed as to throw the light ten points on each side of the ship—viz., from right ahead to two points abaft the beam on either side, and of such a character as to be visible on a dark night with a clear atmosphere at a distance of at least five miles :

(*b.*) *On the starboard side*, a green light so constructed as to throw an uniform and unbroken light over an arc of the horizon of ten points of the compass, so fixed as to throw the light from right ahead to two points abaft the beam on the starboard side, and of such a character as to be visible on a dark night with a clear atmosphere at a distance of at least two miles :

(*c.*) *On the port side*, a red light so constructed as to show an uniform unbroken light over an arc of the horizon of ten points of the compass, so fixed as to throw the light from right ahead to two points abaft the beam on the port side, and of such a character as to be visible on a dark night with a clear atmosphere at a distance of at least two miles :

(*d*) The said green and red side lights shall be fitted with inboard screens projecting at least three feet forward from the light, so as to prevent these lights from being seen across the bow.

See note to Art. V., as to what "under weigh" has been held to mean.

Place for lights.

The law does not appoint any particular place at which the lights should be fixed, but they must be placed so as to be perfectly visible (*b*).

Default as to screens.

If a ship carries side lights with screens shorter than those required by this rule, and she comes into collision with another vessel, she will not be deemed in fault for this breach of the rules, if the shortness of the screens could not by any possibility have contributed to the collision (*c*). And if one of a vessel's lights was invisible, she will not simply on that account

(*b*) *The Bougainville*, L. R. 5 P. C. 316.
(*c*) *The Fanny M. Carvill*, 2 Asp. Mar. Law Cas. (P. C.) 565.

Art. III.

Lights must be effectual.

be held to have contributed to the accident where the other vessel has pursued a course which of itself would suffice to produce the collision (*d*).

Besides carrying the proper lights, a ship must not do anything that will render them ineffectual; thus it was held to be negligence on the part of a steamer to go at full speed under steam and sail before the wind, whilst her smoke was blown over her bows. This obscured the lights, and prevented her from seeing, and from being seen by other ships approaching from an opposite direction (*e*). A barque was held to be liable when from her peculiar form and rig, and the position of the lights, a vessel coming end on was unable to see them (*f*).

Diagrams to illustrate the use of Lights.

The following diagrams, published by the Admiralty authorities, together with the above regulations, are intended to illustrate the use of the lights carried by vessels at sea, and the manner in which they indicate to the vessel which sees them the position and description of the vessel which carries them:

When both lights are seen.

First.—When both red and green lights are seen:

A sees a red and green light ahead; A knows that a vessel is approaching her on a course directly opposite to her own, as B:

When red light is seen alone.

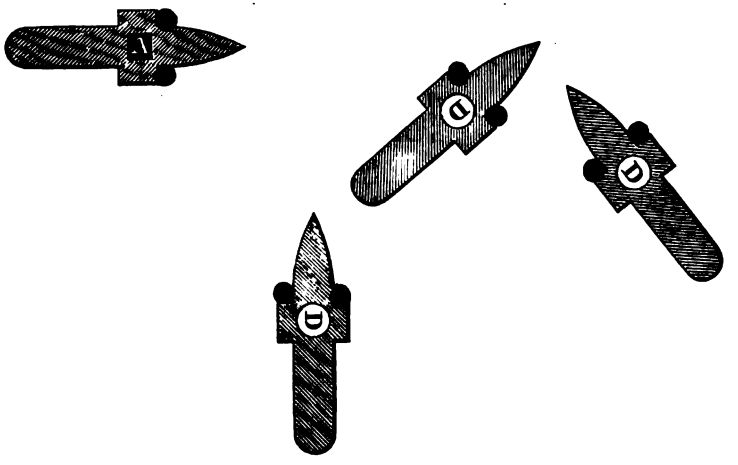
If A sees a white mast-head light above the other two, she knows that B is a steam-vessel.

Second.—When the red, and not the green light is seen:

A sees a red light ahead on the bow: A knows that either,—(1) a vessel is approaching her on her port bow, as B;

(*d*) *The Bougainville*, L. R. 5 P. C. 316.
(*e*) *The Rona*, 2 Asp. Mar. Law Cas. (P. C.) 182.
(*f*) *The Germania*, 21 L. T. N. S. (P. C.) 44.

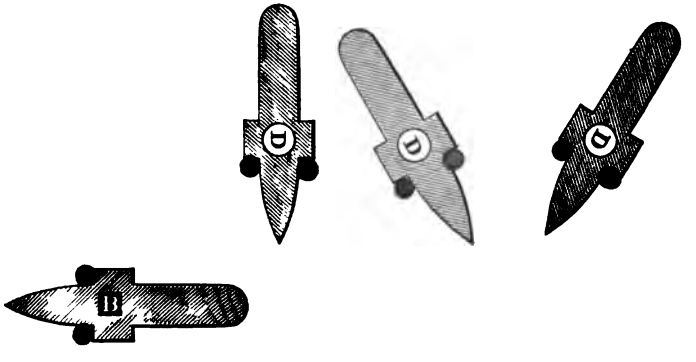
or,—(2) a vessel is crossing in some direction to port, as D D D.



If A sees a white mast-head light above the red light, A knows that the vessel is a steam-vessel, and is either approaching her in the same direction, as B, or is crossing to port in some direction, as D D D.

Third.—When the green, and not the red light, is seen : A sees a green light ahead or on the bow ; A knows that either,— (1) a vessel is approaching her on her starboard bow, as B ; When green light is seen alone.

or,—(2) a vessel is crossing in some direction to starboard, as D D D.



Art. IV. If A sees a white mast-head light above the green light, A knows that the vessel is a steam-vessel, and is either approaching her in the same direction as B, or is crossing to starboard in some direction, as D D D.

Lights for Steam Tugs.

Art. IV.—Steam ships when towing other ships shall carry two bright white mast-head lights vertically, in addition to their side lights, so as to distinguish them from other steam ships. Each of these mast-head lights shall be of the same construction and character as the mast-head lights which other steam ships are required to carry.

Tug and tow considered one ship.

When one vessel is towing another, the two ships are considered as one with regard to any collision occurring between either of them and a third ship (*g*); and if the tug is under steam, both vessels are regarded as one steam ship (*h*). They are therefore subject to Art. XV., which requires a steam ship to keep out of the way of a sailing ship when there is any risk of collision.

Allowance for encumbrance of tow.

But there is a distinction between an unencumbered steamer and one that has another ship in tow (*i*). The latter is not mistress of her own motions in anything like the same degree as the former. She cannot, by stopping or reversing her engines, at once stop or back the ship which is following her. This distinction is applicable under these rules, and may in certain circumstances justify a departure from the rules under Art. XIX. It does not go the length of absolving altogether the encumbered steamer from obedience to the rules which apply to all steamers, but it necessitates allowances being made under the circumstances of each case for the comparatively disabled condition of the encumbered steamer, and imposes upon a sailing ship approaching her the duty of additional caution (*k*).

Liability *inter se.*

The actual liability for the damage rests on the vessel which is the "governing power." In ordinary cases, the tug is in the service and under the directions of the tow, and the tow is then answerable for the negligence of her servant, according to the ordinary rules of master and servant (*l*). But it sometimes happens that the "governing power" is entirely in the tug, and when this is the case, and when the tow is passive, and is managed entirely by directions issuing from the tug, the liability will fall on the latter (*m*).

(*g*) *The Cleadon; Stevens* v. *Gourley*, 14 Moo. P. C. 92; *The John Counter*, 1 Stuart's Vice Ad. Rep. (Quebec), 348.

(*h*) *The U. S. Grant*, 7 Benedict (Amer. Rep.), 195.

(*i*) *The Independence*, 14 Moo. P. C. 103; *The Kingston-by-Sea*, 3 W. Rob. 155; *The La Plata*, Swa. 220.

(*k*) *The American and The Syria*, L. R. 6 P. C. 131; 2 Asp. Mar. Law Cas. 350.

(*l*) *The Cleadon; Stevens* v. *Gourley*, 14 Moo. P. C. 97. 1 Parsons on Shipping (Ed. 1869) 534. *Smith* v. *The Creole*, 2 Wallace, Jr. C. C. (Amer. Rep.) 485.

(*m*) *The American and The Syria*, L. R. 6 P. C. 127; *Cushing* v. *The John Frazer*, 21 Howard (Amer. Rep.) 184; *The Express*, 1 Blatch. C. C. (Amer. Rep.) 365.

When those in charge of the respective vessels jointly participate in their control and management, and the master or crew of both vessels are either deficient in skill, omit to take due care, or are guilty of negligence in their navigation, the American Courts have held both ships jointly liable for the damage (*n*). The general rule seems to be that the damage must be paid for by those through whose default it was brought about.

Both ships sometimes liable.

Steamers towing vessels in the Thames shall, between sunset and sunrise, exhibit in addition to the three lights required by Art. III., a white light on the foremast or funnel, not less than four feet vertically above the white light there mentioned, of the like power, and similar to it in every respect (*o*).

Steamers' lights for towing in the Thames.

Lights for Sailing Ships.

Art. V.—Sailing ships under weigh or being towed shall carry the same lights as steam ships under weigh, with the exception of the white mast-head lights, which they shall never carry.

The object of the rules prescribing lights for vessels under weigh, is to give other vessels the means of knowing that they are approaching a ship in motion, and in consequence to give her a wider berth than they would if she carried an anchor light. The true criterion in applying the rules must be whether the vessel be actually held by and under the control of her anchor or not. The moment she ceases to be so, she is in the category of a vessel "under weigh," and must carry the appropriate coloured lights (*p*). Thus it has been held, that a vessel driven from her anchors by a gale of wind, and setting sail to get out to sea, is, even if wholly unmanagable "under weigh" within the meaning of the regulation, and bound to exhibit the lights ordered in Arts. III. and V. (*q*). On the same principle, a vessel with her anchor down, but not actually holden by and under the control of it, has been held to be "under weigh," and liable for damage resulting from collision with a vessel that approached close to her, owing to an anchor light having been alone exhibited (*r*).

Meaning of "under weigh."

Exceptional Lights for Small Vessels.

Art. VI. Whenever, as in the case of small vessels during bad weather, the green and red lights cannot be fixed, these lights shall be kept on deck on their respective sides of the vessel ready for instant exhibition, and shall, on the approach of or to other vessels, be exhibited on their respective sides in

Small vessels.

(*n*) *Sturgis* v. *Boyer*, 24 Howard (Amer. Rep.) 121, 122.
(*o*) Order in Council, dated 5th February, 1872, consolidating the Thames regulations, rule 33. London Gazette, 6th February, 1872.
(*p*) *The Esk*, L. R. 2 A. & E. 353; L. R. 3 P. C. 440.
(*q*) *The George Arkle*, Lush (P. C.) 382.
(*r*) *The Esk*, L. R. 2 A. & E. 350.

Art. VI.-IX.

sufficient time to prevent collision, in such manner as to make them most visible, and so that the green light shall not be seen on the port side, nor the red light on the starboard side.

To make the use of the portable lights more certain and easy, the lanterns containing them shall each be painted outside with the colour of the light they respectively contain, and shall be provided with suitable screens.

Lights for Ships at Anchor.

Ships at anchor.

Art VII.—Ships, whether steam ships or sailing ships, when at anchor in roadsteads or fairways, shall exhibit where it can best be seen, but at a height not exceeding twenty feet above the hull, a white light in a globular lantern of eight inches in diameter, and so constructed as to show a clear uniform and unbroken light visible all round the horizon, and at a distance of at least one mile.

When a vessel in motion comes into collision with one at anchor, the presumption is that the vessel in motion was to blame, because she has power to change her course, while the ship at anchor must remain stationary (*s*). This is the presumption, even if the ship in motion has become unmanageable (*t*).

Light must be always visible.

This riding light must be *always* visible. If it is taken down in order to be cleaned or trimmed, or for any other reason, and a collision ensues while it is down, the vessel at anchor will be held to be *primâ facie* in fault (*u*).

Lights for Pilot Vessels.

Art. VIII.—Sailing pilot vessels shall not carry the lights required for other sailing vessels, but shall carry a white light at the mast-head visible all round the horizon,—and shall also exhibit a flare-up light every fifteen minutes.

See sec. 346, p. 317, as to what are the other distinguishing marks of pilot vessels.

Lights for Fishing Vessels and Boats.

Art. IX.—Open fishing boats and other open boats shall not be required to carry side lights required for other vessels; but

(*s*) *The Annapolis*, Lush, 311, 360; *The George Arkle*, 5 L. T. N. S. 326; *The Scioto*, Davies (Amer. Rep.) 359; *Bill* v. *Smith*, 39 Conn. (Amer. Rep.) 206.

(*t*) *Seccombe* v. *Wood*, 2 M. & R. 290.

(*u*) *The Larnax*, 2 Asp. Mar. Law Cas (P. C.) 94; *Rogers* v. *The St. Charles*, 19 Howard (Amer. Rep.) 108.

shall, if they do not carry such lights, carry a lantern having a green slide on the one side and a red slide on the other side; and on the approach of or to other vessels such lantern shall be exhibited in sufficient time to prevent collision, so that the green light shall not be seen on the port side, nor the red light on the starboard side.

Fishing vessels and open boats when at anchor or attached to their nets and stationary shall exhibit a bright white light.

Fishing vessels and open boats shall, however, not be prevented from using a flare-up in addition if considered expedient.

Dredgers' Lights in the Thames (*x*).

Dredgers in the Thames.

Every steam dredger moored in the River Thames shall, between sunset and sunrise, exhibit three bright lights from globular lanterns of not less than eight inches in diameter, the said three lights to be placed in a triangular form, and to be of sufficient power to be distinctly visible with a clear atmosphere, on a dark night, at a distance of at least one mile, and to be placed not less than six feet apart on the highest part of the framework athwart ships (*x*).

Rules concerning Fog Signals.

Art X.—Whenever there is fog, whether by day or night, the fog signals described below shall be carried and used, and shall be sounded at least every five minutes; viz.—

(*a.*) Steam ships under weigh shall use a steam whistle placed before the funnel not less than eight feet from the deck.

(*b.*) Sailing ships under weigh shall use a fog horn.

(*c.*) Steam ships and sailing ships when not under weigh shall use a bell.

What amounts to a fog.

See note to Art. V., p. 269, as to what "under weigh" has been held to mean. Fog signals should be continually sounded from the moment the fog sets in (*y*). In construing a similar rule to this in America (*z*), it was said that to give it a reasonable interpretation, its intent must be to give approaching vessels a warning which the fog would otherwise deprive them of. If it be entirely plain upon the evidence that the ordinary signals are sufficient, and decidedly more efficacious than the

(*x*) Order in Council, 5th February, 1872, rule 34.

(*y*) *The Westphalia*, 4 Benedict (Amer. Rep.) 408; 1 Asp. Mar. Law, Cas. 12; 24 L. T. N. S. 75.

(*z*) *The Monticello*, U. S. D. C. Mass. 1867, quoted in Parsons on Shipping (Ed. 1869), i. 566.

Art. X., I.

horn, &c., would be, the latter will not be required. Thus, if the lights could be plainly and easily made out at a mile, and the fog horn could not be heard at a third or quarter of that distance, it can hardly be supposed that such a state of the atmosphere would amount to a fog, in the sense of the law, although there might be something in the nature of a mist or haze on the sea. (See note to Art. XVI. p. 276, as to rate of speed during a fog).

Steering and Sailing Rules.

Two Sailing Ships Meeting.

Art. XI.—If two sailing ships are meeting end on, or nearly end on, so as to involve risk of collision, the helms of both shall be put to port, so that each may pass on the port side of the other.

Meaning of Articles XI. and XIII.

Order in Council, 30th July, 1868.—The two Articles numbered XI. and XIII. respectively only apply to cases where ships are meeting end on, or nearly end on, *in such a manner as to involve risk of collision.* They, consequently, do not apply to two ships which must, if both keep on their respective courses, pass clear of each other.

Cases where they do apply.

The only cases in which the said two Articles apply are when each of the two ships is end on, or nearly end on, to the other; in other words, to cases in which, *by day*, each ship sees the masts of the other in a line, or nearly in a line, with her own; and, *by night*, to cases in which each ship is in such a position as to see both the side lights of the other.

Where they do not apply.

The said two Articles do not apply *by day*, to cases in which a ship sees another *a-head* crossing her own course; or, *by night*, to cases where the red light of one ship is opposed to the red light of the other; or where the green light of one ship is opposed to the green light of the other; or where a red light without a green light, or a green light without a red light, is seen a-head; or where both green and red lights are seen anywhere but a-head.

Article XI. applies to all sailing ships meeting in the above sense, whether they are close-hauled, or not, and all such ships *must*, when meeting, put their helms to port in obedience to it (*a*). There may perhaps be an exception in the case where a vessel by porting would

(*a*) *The Eliza*, Holt, 67.

throw herself out of command (*b*). This might be regarded as a special circumstance under Art. XIX., but there are certainly no other exceptions but such as can be brought under Art. XIX. (*c*).

Art. XI.-XIII.

A brig, heading E.S.E., saw the green light of a barque about one and a half or two points off, on her port bow, and did nothing until the barque just before the collision changed her course, and opened her red light, when she put her helm down. These vessels were held to be meeting nearly end on, and the blame was laid on the barque (*d*). But a ship on the port tack, heading W.N.W., and another on the starboard tack, heading S.E. by E., were held not to be "meeting end on" (*e*).

Cases of ships meeting end on.

Two Sailing Ships crossing.

Art. XII.—When two sailing ships are crossing so as to involve risk of collision, then if they have the wind on different sides, the ship with the wind on the port side shall keep out of the way of the ship with the wind on the starboard side; except in the case in which the ship with the wind on the port side is close hauled and the other ship free, in which case the latter ship shall keep out of the way; but if they have the wind on the same side, or if one of them has the wind aft, the ship which is to windward shall keep out of the way of the ship which is to leeward.

The Constantine was heading N.N.E., and *The Spring* W. by S. The wind was S.S.E. The *C.* kept her course, and the *S.* ported her helm, whereupon they came into collision. Both ships were held in fault, the *C.* for not having kept out of the way, and the *S.* for not having kept her course under Art. XVIII. (*f*).

Two Ships under Steam meeting.

Art. XIII.—If two ships under steam are meeting end on, or nearly end on, so as to involve risk of collision, the helms of both shall be put to port, so that each may pass on the port side of the other.

See under Art. XI. for the subsequent Order in Council explaining this Article. There must be at least three points difference in the ships' courses to exclude them from the operation of this Article (*g*). Two

Three points difference.

(*b*) *The Catherina Maria*, Holt, 87; *The Wolverine*, Holt, 91.
(*c*) *The Princesan Lovisa*, 2 Mar. Law Cas. 241.
(*d*) *The Delaware*, Holt, 64.
(*e*) *The Constitution*, 2 Moo. P. C. N. S. 453; 2 Mar. Law Cas. 60.
(*f*) *The Spring*, L. R. 1 A. & E. 99; *The Pyrus*, 2 Mar. Law Cas. 288.
(*g*) *The Princesan Lovisa*, 2 Mar. Law Cas. 241; *The Fruiter*, 2 Mar. Law Cas. 291; 12 L. T. N. S. 611.

Art. XIII.-XV.

steamers were meeting nearly end on, and one of them starboarded, alleging as a reason that she would have run into a barge had she ported. As no evidence was given of what became of the barge, it was held that starboarding was not "necessary in order to avoid immediate danger," and therefore was not justifiable under Art. XIX. (*h*).

Two Ships under Steam crossing.

Art. XIV.—If two ships under steam are crossing so as to involve risk of collision, the ship which has the other on her own starboard side shall keep out of the way of the other.

Two steam ships bound in the same general direction, but on courses differing by one point, and steaming one behind the other, were held not to be crossing vessels within the meaning of this Article (*i*).

Steamers in the Thames.

It is the general practice for steam vessels going down the Thames to keep on the north side. If, therefore, a vessel rounding a bend on the north side under a port helm, on her way up the river, sees the red light of one rounding the same bend on her way down, over her starboard bow, and nearer the north side than she is herself, she is not justified in supposing that the vessel coming down will cross her north, and pass her on the port side. Vessels under these circumstances are not crossing within the meaning of Art. XIV. (*k*). (See under Art. XII. as to sailing ships crossing.) The fact that two steam vessels in an estuary are both seeking pilots from the same place, does not exempt the one that has the other on her own starboard from keeping out of the way (*l*).

Sailing Ship and Ship under Steam meeting.

Art. XV.—If two ships, one of which is a sailing ship and the other a steam ship, are proceeding in such directions as to involve risk of collision, the steam ship shall keep out of the way of the sailing ship.

Steamer presumed to be wrong.

When a steamer and a sailing ship come into collision, the presumption is that the steamer was wrong (*m*). Article XV. applies to all steamers. Even a tug that was lying in wait drifting one or two miles an hour, and carrying the lights of a ship in motion, was held liable for not keeping out of the way of a barque coming towards her (*n*). A steamer towing another ship, must keep out of the way of a sailing vessel (*o*).

Towing ships within the rule.

(*h*) *The Concordia*, L. R. 1 A. & E. 93; *The Chesapeake*, 1 Benedict (Amer. Rep.) 23.

(*i*) *The Chanonry*, 1 Asp. Mar. Law Cas. 569.

(*k*) *The Ranger* and *The Cologne*, L. R. 4 P. C. 519; *The Velocity*, L. R. 3 P. C. 44.

(*l*) *The Ada*, 2 Asp. Mar. Law Cas. 8.

(*m*) *The Wenona*, 8 Blatch. (Amer. Rep.) 499.

(*n*) *The Sunnyside*, 1 Asp. Mar. Law Cas. 91; *The Jenny S. Barker*, L. R. 4 A. & E. 456.

(*o*) *The American* and *The Syria*, L. R. 6 P. C. 131; *The Warrior*, L. R. 3 A. & E. 553.

(See under Art. IV., p. 268.) Keeping out of the way may be effected by porting or by starboarding, or by stopping, or by any manœuvre that will carry the steamer clear of the sailing ship (*p*).

When a steamer sees a sailing ship at about two or three miles off, she should not take a course which will carry her across the bows of the sailing ship; and if she does not know what course the sailing ship is keeping, she should slow her engines and take no decisive movement until she can ascertain this (*q*). But if the course of the sailing vessel when first seen, is such that compared with the steamer's course no collision is probable, the steamer is not bound to change her course. She need but watch and see that the courses of the two vessels are preserved. It is only when the sailing vessel changes *her* course, so as to render collision possible, that the steamer must also change hers (*r*).

Steamers' obligations.

Steamers are regarded in the light of vessels navigating with a fair wind, and they are under obligations to do not only whatever a vessel going free, or with a fair wind would be required to do under similar circumstances, but greater care is required of them from being more under command (*s*).

Ships under Steam to slacken Speed.

Art. XVI.—Every steam ship, when approaching another ship so as to involve risk of collision, shall slacken her speed, or, if necessary, stop and reverse; and every steam ship shall, when in a fog, go at a moderate speed.

Continuous approach necessary.

This Article only applies when there is a continuous approaching of the two ships. It does not impose an obligation to slacken speed on a vessel that has at a proper distance ported her helm sufficiently to carry her clear of the other ship (*t*). But when there is "risk of collision," the rule is then imperative that the steamer "shall slacken her speed," and she is not to trust to avoiding the collision by other means (*u*). It is no defence for keeping up too great a speed, that a steamer will answer her helm better when going at such a rate (*x*).

Fogs.

A steamship in a fog *shall* go at a moderate rate of speed. It has been held in America that when a fog is very dense the steamer should proceed as slowly as possible consistent with maintaining steerage way (*y*); and if a steamer reaches a proper anchorage ground, the

(*p*) *The Velasquez*, 4 Moo. P. C. N. S. 426; *The Bougainville*, L. R. 5 P. C. 323; *The Nor*, 2 Asp. Mar. Law Cas. 264; *Peek* v. *Sanderson*, 17 Howard (Amer. Rep.) 178.

(*q*) *The Bougainville*, L. R. 5 P. C. 316; *The General Lee*, 3 Mar. Law Cas. 204.

(*r*) *The Scotia*, 14 Wallace (Amer. Rep.) 170.

(*s*) *St. John* v. *Paine*, 10 Howard (Amer. Rep.) 557; *New York and Virginia Co.* v. *Calderwood*, 19 Howard (Amer. Rep.) 241.

(*t*) *The Jesmond* and *The Earl of Elgin*, L. R. 4 P. C. 1.

(*u*) *The Huntsville*, 8 Blatch. (Amer. Rep.) 228; *The Germania*, 21 L. T. N. S. (P. C.) 44; *The Frankland*, 1 Asp. Mar. Law Cas. (P. C.) 489.

(*x*) *Gjessing* v. *The Hansa*, 1 Asp. Mar. Law Cas. 240.

(*y*) *The Westphalia*, 1 Asp. Mar. Law Cas. 12; 24 L. T. N. S. (Amer.) 75.

Art. XVI., XVII.

Admiralty Court has recently held that she should stop altogether and anchor (*z*). Whenever there is a fog, the master of a sailing ship should put his vessel under command, so as to secure the best chance of avoiding all accidents (*a*).

Rate of speed.

What is a moderate rate of speed must depend upon the locality, density of the fog, state of the weather, and other attendant circumstances (*b*). No steamer has a right to navigate at such a rate that it is impossible for her to prevent damage, taking all precaution at the moment she sees danger to be possible (*c*). Eight or nine knots an hour has been held too high a rate in a fog in the English Channel (*d*). Four or five knots an hour is not a moderate rate for a steamer during a thick fog in the Baltic, 25 miles east of Gothland (*e*). Even in mid-ocean at about 200 miles east of Sandy Hook, but in the track of vessels going to New York, seven knots an hour has been held too fast for a steamer during a thick fog (*f*). In the Horse Channel, at the entrance of the Mersey, a steamer was going ten knots an hour. She sighted a sail three points on her port bow, and about half a mile distant. The night being dark, it was held inexcusable to maintain the rate of ten knots in such a place (*g*).

Mails.

It is no excuse for an excessive speed that the steamer could not otherwise fulfil a contract for the carriage of the mail (*h*).

Steam ferry-boat.

A steam-ferry boat, although navigated with all ordinary care, collided with a ship at anchor, and was held to blame for having started to cross the river during a dense fog, those in charge of her having been informed that there were vessels in or near her track (*i*).

Vessels overtaking other Vessels.

Art. XVII.—Every vessel overtaking any other vessel shall keep out of the way of the said last-mentioned vessel.

Vessel overtaking another.

There is no precise rule laid down defining when one vessel is overtaking another. The whole circumstances of the case, and the locality where the collision occurred, must be considered in the application of this Article. Thus two vessels coming out of the Hudson River, with

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(*z*) *The Otter*, L. R. 4 A. & E. 203; *The Girolamo*, 3 Hagg. Ad. 174.
(*a*) *The Itinerant*, 2 W. Rob. 243; *The Virgil*, 2 W. Rob. 201; *The Victoria*, 3 W. Rob. 56.
(*b*) *The Pensylvania*, 19 Wallace (Amer. Rep.) 133.
(*c*) *The Europa*, 14 Jur. 1627; *The City of Brooklyn*, 1 P. D. (C. A.) 279; *The City of Guatemala*, 7 Benedict (Amer. Rep.) 521; *The Jane*, Holt, 181.
(*d*) *The Westphalia*, 4 Benedict (Amer. Rep.) 408; 24 L. T. N. S. 75.
(*e*) *The Magna Charta*, 1 Asp. Mar. Law Cas. (P. C.) 153; 25 L. T. N. S. 512.
(*f*) *The Pensylvania*, 3 Mar. Law Cas. (P. C.) 477; *The Pensylvania*, 19 Wallace (Amer. Rep.) 125; 2 Asp. Mar. Law Cas. 378; *The Great Eastern*, Br. & L. 287.
(*g*) *The Despatch*, Swa. 138.
(*h*) *The Rose*, 2 W. Rob. 1; *The Vivid*, Swa. 88; *The Northern Indiana*, 3 Blatchford (Amer. Rep.) 92.
(*i*) *The Lancashire*, L. R. 4 A. & E. 198.

courses differing by eight points, were held to be within the rule by the American Courts, and the hindmost made liable for the damage (*k*). In the open sea the rule was held to apply where the two vessels' courses differed by one point; and when a case is within the rule, the burden of proving that she was not to blame rests on the hindmost ship (*l*).

Showing lights to ship astern.

It has long been doubtful whether the vessel ahead ought to exhibit a light to the vessel following her. These rules do not make any provision for lights in such cases, and there is no doubt that it is improper for a ship to carry a fixed stern light, since Article II. prohibits the carriage of any lights but those prescribed in the other rules. But though there is no fixed and definite obligation in all cases to exhibit a light to a ship astern (*m*), yet if a vessel sees another approaching, and has reason to suppose that the approaching ship does not see her, the Privy Council have lately laid it down that it is then the duty of the ship ahead to give some warning to the other, not necessarily by exhibiting a light, but by some signal, such as firing a gun, showing a light, or otherwise. This would indicate her position, and call the attention of the approaching vessel to the danger of a collision (*n*). Giving such warning is a precaution required by the practice of seamen and the special circumstances of the case within the meaning of Article XX. But if the hindmost vessel, with a proper look-out, could have seen the ship ahead at a distance sufficient to avoid her, and only runs into her because her own speed was too great, the ship ahead will not be held guilty of contributory negligence, simply because no look-out behind was kept, and no signal was given to the approaching vessel (*o*).

Ship ahead should give warning.

Construction of Arts. XII., XIV., XV., & XVII.

Art. XVIII.—Where by the above rules one of two ships is to keep out of the way, the other shall keep her course, subject to the qualifications contained in the following Article.

Keeping out of the way.

"Keeping out of the way" does not of necessity mean porting; a vessel may within the meaning of this article keep out of the way by stopping, or by going ahead, or by starboarding, or by porting, or by going as the circumstances may require (*p*). A close-hauled vessel bound to keep her course, is justified in luffing so as to bring her, after she has sighted another vessel, as close to the wind as she can get while remaining under command. Such luffing is not a deviation from her course under this Article, and will not relieve the other vessel having the wind free from the duty of getting out of the way (*q*).

Luffing.

(*k*) *The Columbia*, 10 Wallace (Amer. Rep.) 246.
(*l*) *The Chanonry*, 1 Asp. Mar. Law Cas. 569.
(*m*) *The City of Brooklyn*, 1 P. D. (C. A.) 276.
(*n*) *The Anglo Indian*, 3 Asp. Mar. Law Cas. (P. C.) 3; 33 L. T. N. S. 233.
(*o*) *The Earl Spencer*, 3 Asp. Mar. Law Cas. (P. C.) 4; 33 L. T. N. S. 235.
(*p*) *The Nor*, 2 Asp. Mar. Law Cas. 264.
(*q*) *The Marmion*, 1 Asp. Mar. Law Cas. (P. C.) 412; *The Aimo*, 2 Asp. Mar. Law Cas. (P. C.) 96.

Art. XVIII.-XX.

If a ship bound to keep her course under this Article justifies her departure from it under Article XIX., she takes upon herself the obligation of proving, not only that her departure was at the time it took place necessary in order to avoid immediate danger, but also that the course adopted by her was reasonably calculated to avoid that danger (*r*).

Proviso to save Special Cases.

Art. XIX.—In obeying and construing these rules, due regard must be had to all dangers of navigation; and due regard must also be had to any special circumstances which may exist in any particular case rendering a departure from the above rules necessary in order to avoid immediate danger.

Object of the rule.

The object of this Article is to render as far as possible compulsory the observance of the preceding rules. There must be *immediate danger*, to bring a case within it (*s*). It does not prescribe any particular measures that should be adopted in departing from the strict terms of the regulations it governs, but merely states that, in construing and obeying them as far as possible, urgent attendant circumstances may be taken into consideration (*t*). Established rules and known usages must in general be followed, for every vessel has a right to expect that every other vessel will regard them. But a vessel is not justified for getting into a collision by a pertinacious adherence to a rule, when she might have avoided it by not observing the rule (*u*). No rule should be observed when the circumstances are such that it is apparent its observance must occasion a collision, while a departure from it will prevent one (*x*).

Non-observance of rules.

No Ship under any Circumstances to neglect proper Precautions.

Art. XX.—Nothing in these rules shall exonerate any ship, or the owner, or master, or crew thereof, from the consequences of any neglect to carry lights or signals, or of any neglect to keep a proper look-out, or of the neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case.

When the evidence has established the fact that one ship was carefully navigated, and that the other was not, it is possible no doubt that the careful ship may have blunderingly gone wrong, and that the careless

(*r*) *The Agra*, 4 Moo. P. C. N. S. 435; 2 Mar. Law Cas. (P. C.) 532.
(*s*) *The Princesan Lovisa*, 2 Mar. Law Cas. 241.
(*t*) *The Allan*, 2 Mar. Law Cas. 386.
(*u*) *The Friends*, 1 W. Rob. 485; *The Commerce*, 3 W. Rob. 287; *Allen* v. *Mackay*, 1 Sprague (Amer. Rep.) 219.
(*x*) *Crockett* v. *Newton*, 18 Howard (Amer. Rep.) 581; *The Steamer Oregon* v. *Rocca*, 18 Howard (Amer. Rep.) 570.

ship may by accident have gone right, but the burden of proof on the latter is then very heavy, and strong evidence is required to rebut it (*y*).

Vessels entering a harbour must be extremely careful. Thus, where a steamer ran down a barque at anchor in New York harbour that showed no lights, the American Court held it to be contributory negligence on the part of the steamer's officers, not to have used their night-glasses on entering the port (*z*). Ships in any way obstructing a channel are bound to warn others of their situation (*a*). When a vessel casting off from her moorings in a river places herself at night partly athwart the fairway, so that the regulation lights cannot be seen by vessels astern of her coming up the river, she is bound to make use of some conspicuous signal to warn them of her position (*b*). A steam-tug that places herself in the fairway of a channel, hove to, is bound to keep herself in readiness to move out of the way of other vessels, especially in bad weather (*c*). When a vessel is about to be launched, the law requires the greatest care and vigilance to prevent the launch from coming into collision with any other vessel. For this purpose it is especially necessary that a good look-out should be kept at the time and immediately before the launch takes place (*d*). In short, ships are always required to be what has been termed "intelligently vigilant," and they have other duties to perform to prevent collisions besides strictly and literally carrying out these regulations (*e*).

Entering harbours.

Ships being launched.

Provisions concerning the Regulations.

25 & 26 Vict. c. 63, s. 26.—The Board of Trade shall cause the said regulations, and any alterations therein or additions thereto hereafter to be made, to be printed, and shall furnish a copy thereof to any owner or master of a ship who applies for the same; and production of the Gazette in which any Order in Council containing such regulations, or any alterations therein or additions thereto, is published, or of a copy of such regulations, alterations, or additions, signed or purporting to be signed by one of the secretaries or assistant secretaries of the Board of Trade, or sealed or purporting to be sealed with the seal of the Board of Trade, shall be sufficient evidence of the due making and purport of such regulations, alterations, or additions.

Regulations to be published, and the Gazette containing them to be evidence.

25 & 26 Vict. c. 63, s. 27.—All owners and masters of ships shall be bound to take notice of all such regulations as aforesaid, and shall, so long as the same continue in force, be bound to obey them, and to carry and exhibit no other lights, and to use no other fog-signals than such as are required by the said regulations; and in case of wilful default, the master or the

Owners and masters bound to obey them.

(*y*) *The Glannibanta*, 1 P. D. (C. A.) 291.
(*z*) *The Ville du Havre*, 7 Benedict (Amer. Rep.), 328.
(*a*) *The Saxonia*, Lush. 410.
(*b*) *The John Fenwick*, L. R. 3 A. & E. 500; 1 Asp. Mar. Law Cas. 249.
(*c*) *The Jennie S. Barker*, L. R. 4 A. & E. 459.
(*d*) *The Blenheim*, 2 W. Rob. 421.
(*e*) *The Continental*, 14 Wallace (Amer. Rep.), 359.

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owner of the ship, if it appear that he was in such fault, shall, for each occasion upon which such regulations are infringed, be deemed to be guilty of a misdemeanor.

Breaches of regulations to imply wilful default of person in charge.

25 & 26 Vict. c. 63, s. 28.—In case any damage to person or property arises from the non-observance by any ship of any regulation made by or in pursuance of this Act, such damage shall be deemed to have been occasioned by the wilful default of the person in charge of the deck of such ship at the time, unless it is shown to the satisfaction of the Court that the circumstances of the case made a departure from the regulation necessary.

In America, if loss or damage arises from a breach of the rules, the owner, besides making compensation, forfeits 100 dollars (*f*).

Liability for infringement of regulations in cases of collision.

36 & 37 Vict. c. 85, s. 17.—If in any case of collision it is proved to the Court before which the case is tried that any of the regulations for preventing collision contained in or made under the Merchant Shipping Acts, 1854 to 1873 has been infringed, the ship by which such regulation has been infringed shall be deemed to be in fault, unless it is shown to the satisfaction of the Court that the circumstances of the case made departure from the regulation necessary.

The infringement here meant is an infringement not necessarily causing the collision, but connected with it—an infringement material to the case, and by possibility causing or contributing to it; not an infringement wholly immaterial to the case, and which by no possibility could have anything to do with the collision (*g*). If, when a collision takes place, the proper lights are not burning, and there is no excuse for their having been extinguished, the case will fall within this section, unless it can be shown to the satisfaction of the Court that the circumstances made such a departure from the regulation necessary (*h*). An omission to observe the rules by one vessel does not confer on the other vessel any right to disregard or violate them, or to neglect any reasonable or practicable precaution which the circumstances afford the means and opportunity to adopt. Steamers are required to be intelligently vigilant, and have other duties to perform to prevent collision, besides strictly adhering to the regulations (*i*).

Duty of Masters in case of Collision.

Duties of masters in case of collision.

36 & 37 Vict. c. 85, s. 16.—In every case of collision between two vessels it shall be the duty of the master or person in

(*f*) Act of 1849, c. 105, s. 5.

(*g*) *The Magnet*, L. R. 4 A. & E. 426; *The Farragut*, 10 Wallace (Amer. Rep.), 334; *The Fanny M. Carvill*, 2 Asp. Mar. Law Cas. 565.

(*h*) *The Hibernia*, 2 Asp. Mar. Law Cas. (P. C.) 458.

(*i*) *The Continental*, 14 Wallace (Amer. Rep.), 359; *The Gray Eagle*, 9 Wallace (Amer. Rep.), 510; *Steam Ship Co.* v. *Rumball*, 21 Howard (Amer. Rep.), 384.

charge of each vessel, if and so far as he can do so without danger to his own vessel, crew, and passengers (if any) to stay by the other vessel until he has ascertained that she has no need of further assistance, and to render to the other vessel, her master, crew, and passengers (if any), such assistance as may be practicable, and as may be necessary in order to save them from any danger caused by the collision; and also to give to the master or person in charge of the other vessel the name of his own vessel, and of her port of registry, or of the port or place to which she belongs, and also the names of the ports and places from which and to which she is bound.

In case of non-compliance.

If he fails so to do, and no reasonable cause for such failure is shown, the collision shall, in the absence of proof to the contrary, be deemed to have been caused by his wrongful act, neglect, or default.

Every master or person in charge of a British vessel who fails, without reasonable cause, to render such assistance or give such information as aforesaid, shall be deemed guilty of a misdemeanor, and if he is a certificated officer an inquiry into his conduct may be held, and his certificate may be cancelled or suspended.

Steps for Enforcing the Regulations.

Inspection for enforcing regulations.

25 & 26 Vict. c. 63, s. 30.—The following steps may be taken in order to enforce compliance with the said regulations; (that is to say),

(1.) The surveyors appointed under the Third Part of the Principal Act, or such other persons as the Board of Trade may appoint for the purpose, may inspect any ships for the purpose of seeing that such ships are properly provided with lights and with the means of making fog signals in pursuance of the said regulations, and shall for that purpose have the powers given to inspectors by the 14th section of the Principal Act:

(2.) If any such surveyor or person finds that any ship is not so provided, he shall give to the master or owner notice in writing, pointing out the deficiency, and also what is, in his opinion, requisite in order to remedy the same:

(3.) Every notice so given shall be communicated in such manner as the Board of Trade may direct to the collector or collectors of customs at any port or ports from which such ship may seek to clear or at which her transire is to be obtained; and no collector to whom such communication is made shall clear such ship outwards, or grant her a transire, or allow her to proceed to sea, without a certificate under the hand of

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one of the said surveyors or other persons appointed by the Board of Trade as aforesaid, to the effect that the said ship is properly provided with lights and with the means of making fog signals in pursuance of the said regulations.

Appeal on Refusal of Certificate.

39 & 40 Vict. c. 80, (*part of*) s. 14.—And whereas by section thirty of the Merchant Shipping Act Amendment Act, 1862, provision is made for preventing a ship from proceeding to sea in certain cases without a certificate from a surveyor or person appointed by the Board of Trade, to the effect that the ship is properly provided with lights, and with the means of making fog signals; And whereas it is expedient to give in the said cases such appeal as hereinafter mentioned: Be it therefore enacted, that, if a shipowner feels aggrieved,

* * * * * *

(3.) By the refusal of a certificate as to lights or fog signals under the above-recited enactment, the owner may appeal in the prescribed manner to the Court of Survey for the port or district where the ship for the time being is. (*See under sec.* 291, *p.* 246.)

On such appeal, the judge of the Court of Survey shall report to the Board of Trade on the question raised by the appeal, and the Board of Trade, when satisfied that the requirements of the report and other provisions of the said enactments have been complied with, may,—

* * * * * *

(3.) In the case of a refusal of a certificate as to lights or fog signals, give or direct a surveyor or other person appointed by them to give a certificate under section thirty of the Merchant Shipping Act Amendment Act, 1862.

As to costs, and as to the persons making the survey, see under sec. 309, p. 290.

Inland Navigation.

Rules for harbours under local Acts to continue in force.

25 & 26 Vict. c. 63, s. 31.—Any rules concerning the lights or signals to be carried by vessels navigating the waters of any harbour, river, or other inland navigation, or concerning the steps for avoiding collision to be taken by such vessels, which have been or are hereafter made by or under the authority of any local Act, shall continue and be of full force and effect notwithstanding anything in this Act or in the Schedule thereto contained.

In harbours and rivers

25 & 26 Vict. c. 63, s. 32.—In the case of any harbour, river, or other inland navigation for which such rules are not

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and cannot be made by or under the authority of any local Act, it shall be lawful for Her Majesty in Council, upon application from the harbour trust or body corporate, if any, owning or exercising jurisdiction upon the waters of such harbour, river, or inland navigation, or, if there is no such harbour trust or body corporate, upon application from persons interested in the navigation of such waters, to make rules concerning the lights or signals to be carried, and concerning the steps for avoiding collision to be taken by vessels navigating such waters; and such rules, when so made, shall, so far as regards vessels navigating such waters, have the same effect as if they were regulations contained in Table (C) in the Schedule to this Act, notwithstanding anything in this Act or in the Schedule thereto contained.

where no such rules exist they may be made.

For the rules of the Thames, see Order in Council of 5th Feb. 1872.

Vessels Mooring or Docking.

Under the Harbours, Docks, and Piers Clauses Act, 1847 (10 & 11 Vict. c. 27), s. 52, the harbour-master may give directions for regulating the times at which vessels may enter and leave the harbour and their position in mooring and discharging cargo. By s. 59, the vessel before entering must be dismantled as the harbour-master may direct. Section 60 orders that sails shall be furled or lowered before the ship enters the dock, otherwise the master incurs a penalty not exceeding 10*l*. Vessels are not to be moored at the entrance of the harbour or dock (*k*).

Rules as to entering docks, &c.

When a vessel is moored at a particular place, and in a particular manner, pursuant to the orders of the harbour-master, she is released from all responsibility for the consequences if damage ensue (*l*), but this does not absolve the master from all further precautions (*m*). It is considered a want of due precaution to move a ship from one dock to another at night, and in thick weather, by means of a steam-tug. Under such circumstances a pilot on board the tow has no such charge or control over her movements as to exculpate the owners (*n*).

Harbour-master's orders.

It is the duty of a dock company to take reasonable care that their dock is kept so free from obstruction that those who use it may do so without danger to their property (*o*); and the dock company is liable for damages occasioned by the neglect of its servants, even though it does not receive any private benefit from the tolls paid by vessels using the dock (*p*). The dock company are also liable in some cases for damages arising indirectly through their negligence. Thus, a shipowner had contracted with a dock company that his ship should be admitted to the dock at a certain time, and on the arrival of the ship at the dock gates

Liability of dock companies.

(*k*) 11 & 12 Vict. c. 27, s. 63.
(*l*) *The Bilbao*, Lush. 149; *The Broeder Trow*, 17 Jur. 94.
(*m*) *The William Lindsay*, L. R. 5 P. C. 344.
(*n*) *The Borussia*, Swa. 94.
(*o*) *Lancaster Canal Co.* v. *Parnaby*, 11 A. & E. 223; *Thompson* v. *North Eastern Ry. Co.*, 2 B. & S. 106; *Pittsburgh* v. *Grier*, 22 Penn. (Amer. Rep.) 54.
(*p*) *Mersey Docks Trustees* v. *Gibbs*, L. R. 1 H. L. 93.

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she was not admitted, owing to something having happened to the gear of the gates. She remained outside, and a storm arose, which caused her to take the ground, and damaged her. A pilot was on board, and the jury having considered that the captain and pilot had done the best for the ship, the dock company were held liable for the damage that ensued (*q*). The respective duties of a dock company and the master of a ship must depend in some measure upon the actual condition and place of the dock as well as upon the statutes which regulate their authority (*r*).

Vessels moored in the Thames.

By the rules of the River Thames, no master of any steam-vessel, engineer, or other person shall set the engine or engines of such steam-vessel in motion during the time that such steam-vessel shall be attached to any mooring or moorings in the river (*s*).

Foreign Ships.

Foreign ships in British jurisdiction to be subject to regulations in Table (C.) in Schedule.

25 & 26 Vict. c. 63, s. 57.—Whenever foreign ships are within British jurisdiction, the regulations for preventing collisions contained in Table (C.) in the Schedule to this Act, or such other regulations for preventing collision as are for the time being in force under this Act, and all provisions of this Act relating to such regulations, or otherwise relating to collisions, shall apply to such foreign ships; and in any cases arising in any British Court of Justice, concerning matters happening within British jurisdiction, foreign ships shall, so far as regards such regulations and provisions, be treated as if they were British ships.

Regulations when adopted by a foreign country, may be applied to its ships on the high seas.

25 & 26 Vict. c. 63, s. 58.—Whenever it is made to appear to Her Majesty that the Government of any foreign country is willing that the regulations, for preventing collisions contained in Table (C.) in the Schedule to this Act, or such other regulations for preventing collision as are for the time being in force under this Act, or any of the said regulations, or any provisions of this Act relating to collisions, should apply to the ships of such country when beyond the limits of British jurisdiction, Her Majesty may, by Order in Council, direct that such regulations, and all provisions of this Act which relate to such regulations, and all such other provisions as aforesaid, shall apply to the ships of the said foreign country, whether within British jurisdiction or not.

As to countries that have adopted the regulations, see p. 263.

Orders in Council.

Effect of Order in Council.

25 & 26 Vict. c. 63, s. 61.—Whenever an Order in Council has been issued under this Act, applying any provision of this Act or any regulation made by or in pursuance of this Act to

(*q*) *Wilson* v. *Newport Dock Co.*, 2 Mar. Law Cas. 313.
(*r*) *The Excelsior*, L. R. 2 A. & E. 268; 3 Mar. Law Cas. 151.
(*s*) Order in Council, 5th February, 1872, rule 31.

the ships of any foreign country, such ships shall in all cases arising in any British Court be deemed to be subject to such provision or regulation, and shall for the purpose of such provision or regulation be treated as if they were British ships.

Orders in Council may be limited as to time, and qualified.

25 & 26 Vict. c. 63, s. 62.—In issuing any Order in Council under this Act Her Majesty may limit the time during which it is to remain in operation, and may make the same subject to such conditions and qualifications, if any, as may be deemed expedient, and thereupon the operation of the said order shall be limited and modified accordingly.

Orders in Council may be revoked and altered.

25 & 26 Vict. c. 63, s. 63.—Her Majesty may by Order in Council from time to time revoke or alter any order previously made under this Act.

Orders in Council to be published in London Gazette.

25 & 26 Vict. c. 63. s. 64.—Every Order in Council to be made under this Act shall be published in the "London Gazette" as soon as may be after the making thereof; and the production of a copy of the "London Gazette" containing such order shall be received in evidence, and shall be proof that the order therein published has been duly made and issued; and it shall not be necessary to plead such order specially.

Equipment of Steam Ships.

Equipment of steam ships.

301. Steam ships shall be provided as follows; (that is to say,)

Safety valve.

(1.) Every steam ship of which a survey is hereby required shall be provided with a safety valve upon each boiler, so constructed as to be out of the control of the engineer when the steam is up, and, if such valve is in addition to the ordinary valve, it shall be so constructed as to have an area not less and a pressure not greater than the area of and pressure on that valve:

Compasses to be adjusted.

(2.) Every sea-going steam ship employed to carry passengers shall have her compasses properly adjusted from time to time; such adjustment, in the case of ships surveyed as hereinafter mentioned, to be made to the satisfaction of the shipwright surveyor, and according to such regulations as may be issued by the Board of Trade:

Fire hose.

(3.) Every sea-going steam ship (unless used solely as a steam tug) shall be provided with a hose adapted for the purpose of extinguishing fire in any part of the ship, and capable of being connected with the engines of the ship:

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(4.) *Repealed by* 39 & 40 Vict. c. 80, s. 45 (*t*).

Shelter for deck passengers.

(5.) Every home trade steam ship employed to carry passengers by sea shall be provided with such shelter for the protection of deck passengers (if any) as the Board of Trade, having regard to the nature of the passage, the number of deck passengers to be carried, the season of the year, the safety of the ship, and the circumstances of the case, may require:

And if any steam ship as aforesaid plies or goes to sea from any port in the United Kingdom without being so provided as hereinbefore required, then for each default in any of the above requisites the owner shall (if he appears to be in fault) incur a penalty not exceeding 100*l.*, and the master shall (if he appears to be in fault) incur a penalty not exceeding 50*l.*

Penalty for improper weight on safety valve.

302. If any person places an undue weight on the safety valve of any steam ship, or, in the case of steam ships surveyed as hereinafter mentioned, increases such weight beyond the limits fixed by such engineer surveyor as hereinafter mentioned, he shall, in addition to any other liabilities he may incur by so doing, incur a penalty not exceeding 100*l.*

Survey of Passenger Steamers.

Definition of passenger steamer.

303. For the purpose of the enactments herein contained with respect to surveys and certificates of passenger steam ships, the word "passengers" shall be held to include any person carried in a steam ship, other than the master and crew and the owner, his family and servants; and the expression "passenger steamer" shall be held to include every British steam ship carrying passengers to, from, or between any place or places in the United Kingdom, excepting steam ferry-boats working in chains, commonly called steam bridges.

Passenger steamers to be surveyed once in every year according to 17 & 18 Vict. c. 104.

304. *Repealed by* 35 & 36 Vict. c. 73, s. 8.—The 304th section of the Merchant Shipping Act, 1854, shall be repealed, and every passenger steamer shall be surveyed once at the least in every year in the manner mentioned in the fourth part of that Act. The fees to be charged for certificates issued in respect of such survey shall not exceed for a yearly certificate

(*t*) This subsection provided for signals of distress, but see now, under s. 27 of the "Passengers Act, 1855," p. 493.

twice the sum named in the table marked T in the Schedule to the said Act as chargeable for a six months' certificate.

See under s. 314, p. 293, as to the fees payable.

Duties of surveyors.

35 & 36 Vict. c. 73, s. 13.—All duties in relation to the survey and measurement of ships under this Act ("*The Merchant Shipping Act*, 1872"), or the Acts hereby amended shall be performed by the surveyors appointed under the fourth part of the Merchant Shipping Act, 1854, in accordance with such regulations as may be from time to time made by the Board of Trade.

Board of Trade to appoint surveyors, and fix their remuneration.

305. The Board of Trade may from time to time appoint such number of fit and proper persons to be shipwright surveyors and engineer surveyors for the purposes of this Act at such ports or places as it thinks proper, and may also appoint a surveyor general for the United Kingdom, and may from time to time remove such surveyors or any of them, and may from time to time fix and alter the rates of remuneration to be received by such surveyors.

As to fees for measurements, see under s. 19 of the "Passengers Act, 1855," p. 487.

Surveyors to have power to inspect.

306. It shall be lawful for the said surveyors in the execution of their duties to go on board any steam ship at all reasonable times, and to inspect the same or any part thereof, or any of the machinery, boats, equipments, or articles on board thereof, or any certificates of the master or mate to which the provisions of this Act or any of the regulations to be made by virtue thereof apply, not unnecessarily detaining or delaying the ship from proceeding on any voyage, and, if in consequence of any accident to any such ship or for any other reason they consider it necessary so to do, to require the ship to be taken into dock for the purpose of surveying the hull thereof; and any person who hinders any such surveyor from going on board any such steam ship, or otherwise impedes him in the execution of his duty under this Act, shall incur a penalty not exceeding 5*l.*

Board of Trade to regulate mode of making surveys.

307. The said surveyors shall execute their duties under the direction of the Board of Trade, and such Board shall make regulations as to the manner in which the surveys hereinafter mentioned shall be made, and as to the notice to be given

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to the surveyors when surveys are required, and as to the amount and payment of any travelling or other expenses incurred by such surveyors in the execution of their duties, and may thereby determine the persons by whom and the conditions under which such payment shall be made.

Penalty on surveyors receiving fees unlawfully.

308. Every surveyor who demands or receives directly or indirectly from the owner or master of any ship surveyed by him under the provisions of this Act any fee or remuneration whatsoever for or in respect of such survey, otherwise than as the officer and by the direction of the Board of Trade, shall incur a penalty not exceeding 50*l.*

Owners to have surveys made by shipwright and engineer surveyors, and surveyors to give declarations.

309. The owner of every passenger steamer shall cause the same to be surveyed at the times hereinafter directed (*see s.* 311) by one of the said shipwright surveyors and by one of the said engineer surveyors so appointed as aforesaid; such shipwright surveyor being, in the case of iron steamers, a person who is in the judgment of the Board of Trade properly qualified to survey such ships; and such surveyors shall thereupon, if satisfied that they can with propriety do so, give to such owner declarations as follows:

The declaration of the shipwright surveyor shall contain statements of the following particulars (that is to say):

(1.) That the hull of the ship is sufficient for the service intended and in good condition:

(2.) That the partitions, boats, life-buoys, lights, signals, compasses, and shelter for deck passengers, and the certificates of the master and mate or mates, are such, and in such condition as required by this Act:

(3.) The time (if less than six months) for which the said hull and equipments will be sufficient:

(4.) The limits (if any) beyond which, as regards the hull and equipments, the ship is in the surveyor's judgment not fit to ply:

(5.) The number of passengers which the ship is in the judgment of the surveyor fit to carry, distinguishing, if necessary, between the respective numbers to be carried on the deck and in the cabins, and in different parts of the deck and cabins: such numbers to be subject to such conditions and variations, according to the time of year, the nature of the voyage, the cargo carried, or other circumstances, as the case requires:

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And the declaration of the engineer surveyor shall contain statements of the following particulars (that is to say):

(1.) That the machinery of the ship is sufficient for the service intended, and in good condition:

(2.) The time (if less than six months) for which such machinery will be sufficient:

(3.) That the safety-valves and fire-hose are such and in such condition as are required by this Act:

(4.) The limits of the weight to be placed on the safety-valves:

(5.) The limits (if any) beyond which, as regards the machinery, the ship is in the surveyor's judgment not fit to ply:

And such declarations shall be in such form as the Board of Trade directs.

Declaration of engineer surveyor to contain statement concerning engineer's certificate.

25 & 26 Vict. c. 63, s. 12.—The declaration required to be given by the engineer surveyor under section 309 of the Principal Act shall, in the case of a ship by this Act required to have a certificated engineer, contain in addition to the statement in the said section mentioned, a statement that the certificate or certificates of the engineer or engineers of such ship is or are such and in such condition as is required by this Act.

Appeal on Refusal of certain Certificates to Ships.

Appeal on refusal of certain certificates under Merchant Shipping and Passengers Acts.

39 & 40 Vict. c. 80 (*part of*), s. 14.—Whereas by section 309 of the Merchant Shipping Act, 1854, and enactments amending the same, the owner of a passenger steamer as defined in that Act is required to cause the same to be surveyed by a shipwright surveyor and an engineer surveyor, and those surveyors are required to give declarations of certain particulars with respect to the sufficiency or conformity with the Act of the ship and equipments, and to the limits beyond which the ship is not fit to ply, and to the number of passengers which the ship is fit to carry, and of other particulars in the said section mentioned, and the Board of Trade, under section 312 of the same Act, issue a certificate upon such declarations, and the passenger steamer cannot lawfully proceed to sea without obtaining such certificate;

* * * * * * *

And whereas it is expedient to give in the said cases such appeal as herein-after mentioned: Be it therefore enacted that—

If a shipowner feels aggrieved,

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(1.) by a declaration of a shipwright surveyor or an engineer surveyor respecting a passenger steamer under the above-recited enactments, or by the refusal of a surveyor to give the said declaration;

* * * * * * *

the owner may appeal in the prescribed manner to the Court of Survey for the port or district where the ship for the time being is.

On such appeal the judge of the Court of Survey shall report to the Board of Trade on the question raised by the appeal, and the Board of Trade, when satisfied that the requirements of the report and the other provisions of the said enactments have been complied with, may,—

(1.) In the case of a passenger steamer give their certificate under section 312 of the Merchant Shipping Act, 1854, and

* * * * * * *

Subject to any order made by the judge of the Court of Survey, the costs of and incidental to an appeal under this section shall follow the event.

Subject as aforesaid, the provisions of this Act with respect to the Court of Survey and appeals thereto, so far as consistent with the tenour thereof, shall apply to the Court of Survey when acting under this section, and to appeals under this section.

Where the survey of a ship is made for the purpose of a declaration or certificate under the above recited enactments, the person appointed to make the survey shall, if so required by the owner, be accompanied on the survey by some person appointed by the owner, and in such case, if the said two persons agree, there shall be no appeal to the Court of Survey in pursuance of this section.

As to the Court of Survey, see under s. 291, p. 246. The parts of this section omitted above relate to appeals in cases of refusal of a certificate of clearance for an emigrant ship (see under s. 11 of the "Passengers Act, 1855," p. 478), and in cases of refusal of a certificate as to lights or fog signals (see p. 282).

Transmission of declarations to Board of Trade.

Penalty for delay.

310. The said owner shall transmit such declarations (*u*) to the Board of Trade within fourteen days after the dates of the receipt thereof respectively; and in default shall forfeit a sum not exceeding ten shillings for every day that the sending of such declarations is delayed; and such sum shall be paid upon the delivery of the certificate hereinafter mentioned in addition

(*u*) The declarations mentioned in s. 309, *ante*.

to the fee payable for the same, and shall be applied in the same manner as such fees.

Times appointed for surveys and transmission of declarations.

311. In all cases where it is possible the said half-yearly surveys shall be made in the months of April and of October, and the declarations shall be transmitted on or before the thirtieth day of April and the thirty-first day of October respectively; but if the owner of any passenger-steamer is unable to have the same surveyed in the month of April or October (as the case may be), either by reason of such ship being absent from the United Kingdom during the whole of those periods respectively, or by reason of such ship or the machinery thereof being under construction or repair, or of such ship being laid up in dock, or for any other reason satisfactory to the Board of Trade, then he shall have the same surveyed as aforesaid as soon thereafter as possible, and shall transmit such declarations to the Board of Trade within fourteen days after the receipt thereof, together with a statement of the reasons which have prevented the survey of such ship at the time hereinbefore prescribed, and shall, in case of delay in transmitting the declarations, be liable to a forfeiture similar to that mentioned in the last preceding section.

Surveys of steamers.

25 & 26 Vict. c. 63, s. 34.—Notwithstanding anything in the 311th section of the Principal Act contained, it shall not be necessary for the surveys of passenger steamers to be made in the months of April and October; but no declaration shall be given by any surveyor under the Fourth Part of the said Act for a period exceeding six months, and no certificate issued by the Board of Trade shall remain in force more than six months from the date thereof.

Board of Trade to issue certificate.

312. Upon the receipt of such declarations the Board of Trade shall, if satisfied that the provisions of the Fourth Part of this Act have been complied with, cause a certificate in duplicate to be prepared and issued to the effect that the provisions of the law with respect to the survey of the ship and the transmission of declarations in respect thereof have been complied with; and such certificate shall state the limits (if any) beyond which, according to the declaration of the surveyors, such ship is not fit to ply, and shall also contain a statement of the number of passengers which, according to the declaration of the shipwright surveyor, such ship is fit to

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carry, distinguishing (if necessary) between the respective numbers to be carried on the deck and in the cabins and in different parts of the deck and cabins, such number to be subject to such conditions and variations according to the time of year, the nature of the voyage, the cargo carried, and other circumstances, as the case requires.

Exemption of certain steamers from passenger certificates.

39 & 40 Vict. c. 80, s. 16.—Any steamship may carry passengers not exceeding twelve in number although she has not been surveyed by the Board of Trade as a passenger steamer, and does not carry a Board of Trade certificate as provided by the Merchant Shipping Act, 1854, with respect to passenger steamers.

Provision against Double Survey.

Provision against double survey in case of passenger steamers and emigrant ships.

39 & 40 Vict. c. 80, s. 18.—In every case where a passenger certificate has been granted to any steamer by the Board of Trade under the provisions of the Merchant Shipping Act, 1854, and remains still in force, it shall not be requisite for the purposes of the employment of such steamer under the Passengers Acts that she shall be again surveyed in her hull and machinery in order to qualify her for service under the Passengers Act, 1855, and the Acts amending the same; but for the purposes of employment under those Acts such Board of Trade certificate shall be deemed to satisfy the requirements of the Passengers Acts with respect to such survey, and any further survey of the hull and machinery shall be dispensed with, and so long as a steamship is an emigrant ship, that is a passenger ship within the meaning of the Passengers Act, 1855, and the Acts amending the same, and the provisions contained in the said Passengers Acts as to the survey of her hull, machinery, and equipments have been complied with, she shall not be subject to the provisions of the Merchant Shipping Act, 1854, with respect to the survey of and certificate for passenger steamers, or to the enactments amending the same.

Issue and transmission of certificates.

313. The Board of Trade shall transmit such duplicate certificate to the superintendent of the Mercantile Marine Office, or to some other public officer at such port as the owner may mention for the purpose or at the port where the owner or his agent resides or where the ship was surveyed and is for the time being lying, and shall cause notice of such transmission to be given by post or otherwise to the master or owner or his agent; and the said superintendent or officer shall deliver such duplicate certificate to the said owner, master, or agent, on

his applying and paying the fees and other sums (if any) herein mentioned as payable in that behalf; and in proving the due issue and transmission to the owner, agent, or master of such certificate, it shall be sufficient to show that the same has been duly received by such superintendent or public officer as aforesaid, and that due notice of the transmission thereof to such superintendent or officer has been given to such owner, master, or agent.

Fees to be paid for certificates.

314. The owner of every passenger steamer requiring a certificate under the Fourth Part of this Act shall pay for every certificate granted by the Board of Trade such fees as such Board directs, not exceeding the fees mentioned in the Table marked T. in the schedule hereto.

TABLE T.

FEES TO BE CHARGED FOR THE SURVEY OF PASSENGER STEAMERS.

	£	s.	d.
For steamers not exceeding 100 tons	2	0	0
For steamers exceeding 100 and not exceeding 300 tons .	3	0	0
For steamers exceeding 300 and not exceeding 600 tons .	4	0	0
And every additional 300 tons an additional	1	0	0

How long certificates to continue in force.

315. No certificate shall be held to be in force for the purposes of the Fourth Part of this Act beyond the date fixed by the Board of Trade for the expiration thereof; and no certificate shall be in force after notice is given by the Board of Trade to the owner, agent, or master of the ship to which the same relates, that such Board has cancelled or revoked the same: Provided, that if any passenger steamer is absent from the United Kingdom at the time when her certificate expires, no penalty shall be incurred for the want of a certificate until she first begins to ply with passengers after her next subsequent return to the United Kingdom; and the Board of Trade may require any certificate which has expired, or has been revoked or cancelled, to be delivered up as it directs; and any owner or master who without reasonable cause, neglects or refuses to comply with such requirement, shall incur a penalty not exceeding 10*l*.

Board of Trade may cancel certificates, and

316. The Board of Trade may revoke and cancel such certificates in any case in which it has reason to believe—

(1.) That the declarations of the sufficiency and good condi-

§§ 316-318.

tion of the hull, equipments, and machinery of any passenger steamer, or either of them, have been fraudulently or erroneously made; or,

require fresh declarations.

(2.) That such certificate has otherwise been issued upon false or erroneous information; or,

(3.) That since the making of such declarations the hull, equipments, or machinery of such ship have sustained any injury, or are otherwise insufficient:

And in every such case the Board of Trade may, if it thinks fit, require the owner to have the hull, equipments, or machinery of such ship again surveyed, and to transmit a further declaration or declarations of the sufficiency and good condition thereof, before reissuing any certificate or granting a fresh one in lieu thereof.

Copy of certificate to be placed in conspicuous part of ship.

317. The owner or master of every passenger steamer shall forthwith on the transmission of any such certificate as aforesaid to him or his agent cause one of the duplicates thereof so transmitted to be put up in some conspicuous part of the ship, so as to be visible to all persons on board the same, and shall cause it to be continued so put up so long as such certificate remains in force and such ship is in use; and in default such owner or master shall for every offence incur a penalty not exceeding 10*l.*

Ship not to proceed on her voyage without certificate.

318. It shall not be lawful for any passenger steamer to proceed to sea or upon any voyage or excursion with any passengers on board, unless the owner or master thereof has received from the Board of Trade such a certificate as hereinbefore provided for, such certificate being a certificate applicable to the voyage or excursion on which such ship is about to proceed; and no officer of customs shall grant any clearance or transire for any passenger steamer unless upon the production of such certificate as aforesaid (being a certificate then in force and applicable as aforesaid); and if any passenger steamer attempts to ply or go to sea without such production, any such officer may detain her until such certificate is produced; and if any passenger steamer plies or goes to sea with any passengers on board, without having one of the duplicates of such certificate as aforesaid (being a certificate then in force, and applicable as aforesaid), so put up as aforesaid in some conspicuous part of the ship, the owner thereof shall for such offence incur a penalty not exceeding

100*l.*, and the master of such ship shall also incur a further penalty not exceeding 20*l.*

Penalty for carrying passengers in excess of numbers specified in certificate.

319. If the owner or master or other person in charge of any passenger steamer receives on board thereof or on or in any part thereof, or if such ship has on board thereof or on or in any part thereof, any number of passengers which, having regard to the time, occasion, and circumstances of the case, is greater than the number of passengers allowed by the certificate, the owner or master shall incur a penalty not exceeding 20*l.*, and also an additional penalty not exceeding five shillings for every passenger over and above the number allowed by the certificate, or, if the fare of any of the passengers on board exceeds five shillings, not exceeding double the amount of the fares of all the passengers who are over and above the number so allowed as aforesaid, such fares to be estimated at the highest rate of fare payable by any passenger on board.

Forgery of declaration or certificate a misdemeanor.

320. Every person who knowingly and wilfully makes or assists in making or procures to be made a false or fraudulent declaration or certificate with respect to any passenger steamer requiring a certificate under the Fourth Part of this Act, or who forges, assists in forging, or procures to be forged, fraudulently alters, assists in fraudulently altering, or procures to be fraudulently altered, any declaration or certificate required by the Fourth Part of this Act, or any words or figures in any such declaration or certificate, or any signature thereto, shall be deemed guilty of a misdemeanor.

Surveyors to make returns of the build and other particulars of steamships, and owners and masters to give information for that purpose.

321. The said surveyors shall from time to time make such returns to the Board of Trade as it requires with respect to the build, dimensions, draught, burden, rate of sailing, room for fuel, and the nature and particulars of machinery and equipments of the ships surveyed by them; and every owner, master, and engineer of any such ship shall, on demand, give to such surveyors all such information and assistance within his power as they require for the purpose of such returns; and every such owner, master, or engineer who, on being applied to for that purpose, wilfully refuses or neglects to give such information or assistance, shall be liable to a penalty not exceeding 5*l.*

§§ 322, 323.

Misconduct by Passengers in Steamers.

Sections 322 *and* 323 *are repealed* by 25 & 26 Vict. c. 63, s. 2.

Penalties on drunken or disorderly passengers.

25 & 26 Vict. c. 63, s. 35.—The following offenders; that is to say,

(1.) Any person who, being drunken or disorderly, has been on that account refused admission into any duly surveyed passenger steamer by the owner or any person in his employ, and who, after having had the amount of his fare (if he has paid the same) returned or tendered to him, nevertheless persists in attempting to enter such steamer;

(2.) Any person who being drunk or disorderly on board any such steamer is requested by the owner or any person in his employ to leave the same at any place in the United Kingdom at which he can conveniently so do, and who, having had the amount of his fare (if he has paid the same) returned or tendered to him, refuses to comply with such request;

On persons molesting passengers.

(3.) Any person on board any such steamer who after warning by the master or any other officer of the steamer molests or continues to molest any passenger;

Penalties on persons forcing way on board the ship when full.

(4.) Any person who, after having been refused admission into any such steamer by the owner or any person in his employ on account of such steamer being full, and who after having had the full amount of his fare (if he has paid the same) returned or tendered to him, nevertheless persists in attempting to enter the same;

And on persons refusing to quit the ship when full.

(5.) Any person, having got on board any such steamer, who, upon being requested on the like account by the owner or any person in his employ to leave such steamer before the same has quitted the place at which such person got on board, and who upon having the full amount of his fare (if he has paid the same) returned or tendered to him, refuses to comply with such request;

Penalties for avoiding payment of fares.

(6.) Any person who travels or attempts to travel in any such steamer without having previously paid his fare, and with intent to avoid payment thereof;

(7.) Any person who, having paid his fare for a certain distance, knowingly and wilfully proceeds in any such steamer beyond such distance without previously paying the additional fare for the additional distance, and with intent to avoid payment thereof;

(8.) Any person who knowingly and wilfully refuses or neglects, on arriving at the point to which he has paid his fare, to quit any such steamer; and

(9.) Any person on board any such steamer who does not when required by the master or other officer of such steamer either pay his fare or exhibit such ticket or other receipt (if any) showing the payment of his fare as is usually given to persons travelling by and paying their fare for such steamer;

Shall for every such offence be liable to a penalty not exceeding forty shillings; but such liability shall not prejudice the recovery of any fare payable by him.

Penalty for injuring steamer or molesting crew.

25 & 26 Vict. c. 63, s. 36.—Any person on board any such steamer who wilfully does or causes to be done anything in such a manner as to obstruct or injure any part of the machinery or tackle of such steamer, or to obstruct, impede, or molest the crew or any of them in the navigation or management of such steamer, or otherwise in the execution of their duty upon or about such steamer, shall for every such offence be liable to a penalty not exceeding twenty pounds.

Manner of apprehending offenders.

25 & 26 Vict. c, 63, s. 37.—It shall be lawful for the master or other officer of any duly surveyed passenger steamer, and for all persons called by him to his assistance, to detain any person who has committed any offence against any of the provisions of the two last preceding sections of this Act, and whose name and address are unknown to such officer, and to convey such offender with all convenient despatch before some Justice without any warrant or other authority than this Act; and such Justice shall have jurisdiction to try the case, and shall proceed with all convenient despatch to the hearing and determining of the complaint against such offender.

Penalty on persons refusing to give their name and address.

324. Every person who, having committed any of the offences mentioned in the two last preceding sections or either of them, refuses on application of the master of the ship or of any other person in the employ of the owner thereof to give his name and address, or who on such application gives a false name or address, shall incur a penalty not exceeding 20*l.*, to be paid to the said owner.

Power to refuse or remove passengers who are drunk or misconduct themselves.

325. The master of any home trade passenger steam ship may refuse to receive on board thereof any person who by reason of drunkenness or otherwise is in such a state, or misconducts himself in such a manner, as to cause annoyance to other passengers on board, or if such person is on board, may put him on shore at any convenient place; and no person so refused admittance or put on shore shall be entitled to the return of any fare he may have paid.

§§ 326-329.

Accidents.

Accident to steam ships to be reported to Board of Trade.

326. Whenever any steam ship has sustained or caused any accident occasioning loss of life or any serious injury to any person, or has received any material damage affecting her sea-worthiness or her efficiency either in her hull or in any part of her machinery, the owner or master shall, within twenty-four hours after the happening of such accident or damage, or as soon thereafter as possible, send to the Board of Trade, by letter signed by such owner or master, a report of such accident or damage, and of the probable occasion thereof, stating the name of the ship, the port to which she belongs, and the place where she is; and if such owner or master neglect so to do he shall for such offence incur a penalty not exceeding 50*l.*

327. *Repealed by* 36 & 37 Vict. c. 85, s. 33.

Notice to be given of apprehended loss of ship.

36 & 37 Vict. c. 85, s. 22.—If the managing owner or in the event of there being no managing owner the ship's husband of any British ship have reason owing to the nonappearance of such ship, or to any other circumstance, to apprehend that such ship has been wholly lost, he shall as soon as conveniently may be send to the Board of Trade notice in writing of such loss and of the probable occasion thereof, stating the name of the ship, and her official number, if any, and the port to which she belongs, and if he neglect to do so within a reasonable time he shall incur a penalty not exceeding fifty pounds.

The name and address of the managing owner of every British ship must now be registered, see 39 & 40 Vict. c. 80, s. 36, under s. 33, p. 28.

Collisions to be entered in official log.

328. In every case of collision, in which it is practicable so to do, the master shall immediately after the occurrence cause a statement thereof, and of the circumstances under which the same occurred, to be entered in the official log book (if any), such entry to be signed by the master, and also by the mate or one of the crew, and in default shall incur a penalty not exceeding 20*l.*

Carrying Dangerous Goods.

329. *Repealed by* 36 & 37 Vict. c. 85, s. 33.

Restrictions on carriage of dangerous goods.

36 & 37 Vict. c. 85, s. 23.—If any person sends or attempts to send by, or not being the master or owner of the vessel, carries or attempts to carry in any vessel, British or foreign, any dangerous goods; (that is to say), aquafortis, vitriol, naphtha, benzine, gunpowder, lucifer matches, nitro-glycerine,

petroleum, or any other goods of a dangerous nature, without distinctly marking their nature on the outside of the package containing the same, and giving notice of the nature of such goods and of the name and address of the sender or carrier thereof to the master or owner of the vessel at or before the time of sending the same to be shipped or taking the same on board the vessel, he shall for every such offence incur a penalty not exceeding one hundred pounds: Provided that if such person show that he was merely an agent in the shipment of any such goods as aforesaid, and was not aware and did not suspect and had no reason to suspect that the goods shipped by him were of a dangerous nature, the penalty which he incurs shall not exceed ten pounds.

Penalty for mis-description of dangerous goods.

36 & 37 Vict. c. 85, s. 24.—If any person knowingly sends or attempts to send by, or carries or attempts to carry in any vessel, British or foreign, any dangerous goods or goods of a dangerous nature under a false description, or falsely describes the sender or carrier thereof, he shall incur a penalty not exceeding five hundred pounds.

Power to refuse to carry goods suspected of being dangerous.

36 & 37 Vict. c. 85, s. 25.—The master or owner of any vessel, British or foreign, may refuse to take on board any package or parcel which he suspects to contain goods of a dangerous nature, and may require it to be opened to ascertain the fact.

Power to throw overboard dangerous goods.

36 & 37 Vict. c. 85, s. 26.—When any dangerous goods as defined in this Act, or any goods which in the judgment of the master or owner of the vessel, are of a dangerous nature, have been sent or brought aboard any vessel, British or foreign, without being marked as aforesaid, or without such notice having been given as aforesaid, the master or owner of the vessel may cause such goods to be thrown overboard, together with any package or receptacle in which they are contained; and neither the master nor the owner of the vessel shall in respect of such throwing overboard, be subject to any liability, civil or criminal, in any court.

Forfeiture of dangerous goods improperly sent.

35 & 36 Vict. c. 85, s. 27.—Where any dangerous goods have been sent or carried or attempted to be sent or carried, on board any vessel, British or foreign, without being marked as aforesaid, or without such notice having been given as aforesaid, and where any such goods have been sent or carried, or attempted to be sent or carried under a false description, or the sender or carrier thereof has been falsely described, it shall be lawful for any Court having Admiralty jurisdiction to declare such goods, and any package or receptacle in which they are contained to be and they shall thereupon be forfeited, and when forfeited shall be disposed of as the Court directs.

The Court shall have and may exercise the aforesaid powers of forfeiture and disposal notwithstanding that the owner of the goods have not committed any offence under the provisions

§ 329. of this Act relating to dangerous goods, and be not before the Court and have not notice of the proceedings, and notwithstanding that there be no evidence to show to whom the goods belong; nevertheless, the Court may, in its discretion, require such notice as it may direct to be given to the owner or shipper of the goods before the same are forfeited.

Saving as to Dangerous Goods Act.

35 & 36 Vict. c. 85, s. 28.—The provisions of this Act relating to the carriage of dangerous goods shall be deemed to be in addition to and not in substitution of or in restraint of any other enactment for the like object, so, nevertheless, that nothing in the said provisions shall be deemed to authorize that any person may be sued or prosecuted twice in the same matter.

Harbour authorities to make rules for loading explosives.

Penalty for preventing compliance with rules.

Distress may be levied.

Act not to apply in certain cases.

Exemption if breach of Act was inevitable.

By the "Explosives Act, 1875" (*x*), s. 17, harbour authorities shall make regulations for the loading and unloading of explosives, and the navigation and place of mooring of ships carrying them. And in the case of any breach of the bye-laws, the harbour authorities may remove the vessel causing such breach at the expense of the owner. By s. 88, if the owner or master of the ship is prevented from complying with the Act by the wilful neglect or default of the consignor or consignee of the goods, or other person, such other person will be liable for the same penalty as the master or owner, and the conviction of such person shall exempt the owner or master. Under s. 95, where the owner or master of a ship is adjudged to pay a penalty, the Court may, in addition to any other power they may have for compelling payment, levy a distress or arrestment on the ship and tackle. But (s. 98) the Act does not apply,—(1), to the keeping of any rockets for use in any apparatus for saving life, kept under the control of the Admiralty or Board of Trade; or (2), to the keeping of explosives for signalling at or near a station on the sea coast, under the control of any general lighthouse authority, as defined by the "Merchant Shipping Act, 1854." A master or owner (s. 100) will be exempt from the penalties if he can prove that the breach of the Act was inevitable, or from the circumstances necessary. Any explosives kept in compliance with the rules for signals, &c., under the Merchant Shipping Acts, are exempt from the Act, but are subject to harbour bye-laws.

(*x*) 38 & 39 Vict. c. 17.

PART V.

PILOTAGE.

Application.

330. The Fifth Part of this Act shall apply to the United Kingdom only. Application of Part V.

Pilots.

A "pilot" is defined by section 2 to be any person not belonging to a ship who has the conduct thereof; and a "qualified pilot" shall mean any person duly licensed by any pilotage authority to conduct ships to which he does not belong. He is excepted from the definition of a seaman. A pilot supersedes the master, and the master is bound to obey his directions in the management of the vessel (*a*); if the master acts in any way contrary to the opinion of the pilot, he will be responsible for any damage that may occur by reason of such acts, notwithstanding that the pilot has charge of the ship (*b*). The mere fact of taking a pilot on board does not exonerate the master and crew from the proper observance of their own duty. It is the duty of the pilot to secure the safe conduct of the vessel by issuing the necessary orders, and it is the duty of the crew to carry those orders into execution; and for the due performance of their relative duties the master and crew are still responsible (*c*). As a rule the master should repeat the orders given by the pilot (*d*). There may be cases in which the master might be justified in resisting or interfering with the pilot, but the circumstances must be very strong, and fully proved (*e*). When a vessel is taking up her berth, the time and manner of dropping the anchor is exclusively within the province of the pilot (*f*); he must also decide whether the ship is to anchor or to proceed (*g*), and if she anchors, how much cable must be let out (*h*). In short, to the pilot belongs the whole conduct of the navigation of the ship, to the safety of which it is important that the chief direction should be vested in one person only (*i*).

Definition of pilot.

Supersedes the master.

Master and crew must do their duty, though pilot is on board.

Scope of pilot's duties.

When the pilot is taken on board a ship that is being towed, his authority extends to the tug as well, and the crew of the tug should obey

Ship in tow.

(*a*) *The Julia*, Lush. (P. C.) 232. The master is the proper person to determine whether a tug shall be employed in ordinary cases; but when the ship is in distress the pilot should then decide this.
(*b*) *The Julia*, Lush. (P. C.) 232; 14 Moo. P. C. 210.
(*c*) *The Diana*, 1 W. Rob. 136; *The Portsmouth*, 6 C. Rob. 317 n.
(*d*) *The Admiral Boxer*, Swa. 196.
(*e*) *The Admiral Boxer*, Swa. 196; *The Maria*, 1 W. Rob. 110; *The Duke of Manchester*, 2 W. Rob. 478; 6 Moo. P C. 90.
(*f*) *The Agricola*, 2 W. Rob. 10.
(*g*) *The Lochlibo*, 3 W. Rob. 321.
(*h*) *The City of Cambridge*, L. R. 5 P. C. 451.
(*i*) *The Christiania*, 6 Moo. P. C. 371.

§ 330.

his directions (*k*). As regards liability for damage to third vessels, a tug and a tow are considered as one ship (*l*). See p. 268.

Owner's immunity.

The owner is not free from liability for damage done by his ship while in charge of a pilot, unless he is compelled by law to employ the pilot (*m*); and if a pilot is employed from choice, he is the agent of the owner, and the owner is therefore responsible for damage the ship may do while thus in charge of the pilot (*n*). See sec. 388, p. 345, as to owner's immunity when compelled to employ a pilot.

Every pilot should always have with him the evidence of his authority, for it is only by this that the master of a vessel can know whether the pilot is qualified to take charge of his ship (*o*).

Foreign Vessels.

Foreign vessels.

Foreign vessels entering British ports are subject to the same rules of pilotage as British vessels. Though the Legislature has no authority over foreign vessels on the high seas, it may impose any conditions upon them when entering a British port, and a vessel not complying with these conditions is guilty of a violation of English law, and of an attempt to make an illegal entry (*p*).

Employment of Pilots when not compulsory by Statute.

Pilot should be employed when special knowledge is necessary.

Besides those cases in which a master is compelled by statute to employ a pilot, it is part of his duty towards the owners of the ship and cargo, and towards the insurers, to employ one whenever special knowledge of the locality is necessary for the safety of the ship, and when the master or mate do not themselves possess such special knowledge (*q*).

When no pilot can be got.

But if the master has used due diligence to procure a pilot, and has been unable to get one, it is then competent for him to exercise his discretion, whether it would be better to enter the harbour without one, or remain where he is (*r*).

Signals for Pilots.

Signals for pilots.

36 & 37 Vict. c. 85, s. 19.—If a vessel requires the services of a pilot, the signals to be used and displayed shall be those specified in the Second Schedule to this Act.

Any master of a vessel who uses or displays, or causes or permits any person under his authority to use or display, any of the said signals for any other purpose than that of summoning a pilot, or uses, or causes or permits any person under his authority to use any other signal for a pilot, shall incur a penalty not exceeding twenty pounds.

(*k*) *The Christiania*, 3 W. Rob. 27; *The Energy*, L. R. 3 A. & E. 48.
(*l*) *The Cleadon*, *Stevens* v. *Gourley*, 14 Moo. P. C. 92.
(*m*) *The Peerless*, Lush. 103; 13 Moo. P. C. 484.
(*n*) *The Neptune the Second*, 1 Dods. Ad. 467; *The Eden*, 2 W. Rob. 442; Parsons on Shipping (ed. 1869), II. 114.
(*o*) *Hammond* v. *Blake*, 10 B. & C. 424; *Commonwealth* v. *Ricketson*, 46 Mass. (Amer. Rep.), 412.
(*p*) *The Annapolis*, Lush. 308.
(*q*) *Law* v. *Hollingsworth*, 7 T. R. 161; *M'Millan* v. *Union Insurance Co.*, 1 Rice (Amer. Rep.), 248.
(*r*) *Phillips* v. *Headlam*, 2 B. & Ad. 384.

SCHEDULE II.

§§ 330-332.

Signals to be made by Ships wanting a Pilot.

Day signals.

In the Daytime.—The following signals numbered 1 and 2, when used or displayed together or separately, shall be deemed to be signals for a pilot in the daytime, viz. :

1. To be hoisted at the fore, the Jack or other national colour usually worn by merchant ships, having round it a white border, one-fifth of the breadth of the flag ; or,

2. The international code pilotage signal indicated by PT.

Night signals.

At Night.—The following signals numbered 1 and 2, when used or displayed together or separately, shall be deemed to be signals for a pilot at night, viz. :

1. The pyrotechnic light, commonly known as a blue light, every fifteen minutes ; or,

2. A bright white light flashed or shown at short or frequent intervals just above the bulwarks, for about a minute at a time.

The characteristics of pilot boats are set out in sec. 346, p. 317.

Power to alter rules as to signals.

36 & 37 Vict. c. 85, s. 20.—Her Majesty may from time to time by Order in Council repeal or alter the rules as to signals contained in the schedules to this Act, or make new rules in addition thereto, or in substitution therefor, and any alterations in or additions to such rules made in manner aforesaid shall be of the same force as the rules in the said schedules.

Powers of Pilotage Authorities (General).

General jurisdiction of pilotage authorities.

331. Every pilotage authority shall retain all powers and jurisdiction which it now lawfully possesses, so far as the same are consistent with the provisions of this Act ; but no law relating to such authority, or to the pilots licensed by it, and no act done by such authority, shall, if inconsistent with any provision of this Act, be of any force whatever.

Power of pilotage authorities to make and extend exemptions from compulsory pilotage.

332. Every pilotage authority shall have power, by byelaw made with the consent of Her Majesty in Council, to exempt the masters of any ships, or of any classes of ships, from being compelled to employ qualified pilots, and to annex any terms or conditions to such exemptions, and to revise and extend any exemptions now existing by virtue of this Act or any other Act of Parliament, law, or charter, or by usage, upon such terms and conditions and in such manner as may appear desirable to such authority.

For the special powers conferred on the Trinity House, see sec. 368 *et seq.*, p. 329. See under sec. 353, p. 320, *et seq.*, as to what ships are exempted.

§§ 332, 333.

Pilots for Exempted Ships.

By an Order in Council of the 5th February, 1873 (*s*), made pursuant to section 333, the following regulations were approved :

Pilots for exempted ships to produce certificates.

I. All persons applying for licenses as pilots for such exempted ships on the river Thames between London-bridge and Gravesend, shall produce such certificates as shall be deemed satisfactory by the Trinity House previously to examination, as in the said Act provided, on the following points, viz. :—

Of previous service.

(1.) Their qualification by previous service under the rule hereinafter provided.

Of good conduct.

(2.) Their previous good conduct, and habits of sobriety.

Of health.

(3.) That they are in good health, and not afflicted with any bodily complaint or infirmity rendering them unfit to perform the duties of a pilot, which last certificate shall be under the hand of a duly authorised medical practitioner.

Pilot may be qualified after two years' experience.

II. Any person who shall be able to prove to the satisfaction of the Trinity House that he has piloted ships on the River Thames between London-bridge and Gravesend for a period of two years previously to the date of this bye-law, or that he is otherwise eligible by practical experience in the navigation of vessels within that district, shall be deemed qualified, after examination as in the said Act provided, to be licensed as a pilot for the navigation up and down the River Thames between London-bridge and Gravesend subject to the follow terms and conditions, viz. :—

License only to be used for exempted ships.

(1.) That such license shall authorise him to act as pilot only on board such exempted ships and no others ; all pilots so licensed being intended to be designated " Pilots for exempted ships."

Not to supersede regular pilot.

(2.) That such license shall not authorise him to supersede in the charge of any ship any other pilot duly licensed by the Trinity House for the said navigation between London-bridge and Gravesend.

Subject to bye-laws.

(3.) That he shall be subject to all bye-laws, rules, orders, and regulations made, or hereafter to be made, by the Trinity House, for the government of pilots generally, and to all penalties thereby imposed and provided, unless specially exempted therefrom.

Payments.

(4.) That he shall pay the like sums of money as are payable by pilots licensed for the London district on their appointment, and on the annual renewal of their licenses, but shall not be required to pay to the Pilot's Fund the poundage of sixpence in the pound upon the pilotage earnings of pilots licensed by the Trinity House, as provided by the 385th section of the said Act, nor shall he or his widow or children be entitled to any benefit from the said Pilot's Fund.

Powers of pilotage authorities.

333. Subject to the provisions contained in the Fifth Part of this Act, it shall be lawful for every pilotage authority, by byelaw made with the consent of Her Majesty in Council, from time to time to do all or any of the following things within its districts ; (that is to say,)

To determine qualifications of pilots :

(1.) To determine the qualifications to be required from persons applying to be licensed as pilots, whether in

(*s*) See *London Gazette*, 11th Feb. 1873.

respect of their age, skill, time of service, character, or otherwise :

(2.) To make regulations as to the approval and licensing of pilot boats and ships, with power to establish and regulate companies for the support of such boats and ships, and for a participation in the profits made thereby ; the companies so established to be exempt from the provisions of the Act passed in the session holden in the seventh and eighth years of the reign of Her present Majesty, chapter one hundred and ten, intituled An Act for the registration, incorporation, and regulation of joint stock companies : To make regulations as to pilot boats :

(3.) To make regulations for the government of the pilots licensed by them, and for insuring their good conduct, and their constant attendance to and effectual performance of their duty, either at sea or on shore : To make regulations for the government of pilots :

(4.) To fix the terms and conditions of granting licenses to pilots and apprentices, and of granting such pilotage certificates as hereinafter mentioned to masters and mates, and to make regulations for punishing any breach of such regulations as aforesaid committed by such pilots or apprentices or by such masters and mates by the withdrawal or suspension of their licenses or certificates, as the case may be, or by the infliction of penalties to be recoverable summarily before two justices, so that no such penalty be made to exceed the sum of 20*l.*, and so that every such penalty be capable of reduction at the discretion of the justices by whom the same is inflicted : To make regulations as to licenses and certificates :

(5.) To fix the rates and prices or other remuneration to be demanded and received for the time being by pilots licensed by such authority, or to alter the mode of remunerating such pilots, in such manner as such authority may, with such consent as aforesaid, think fit, so that no higher rates or prices be demanded or received from the masters or owners of ships in the case of the Trinity House than the rates and prices specified in the table marked U. in the schedule hereto ; and in the case of all other pilotage authorities, than the rates and prices which might have been lawfully fixed or demanded by such pilotage authorities respectively under To alter and reduce rates of pilotage :

§ 333.

any Act of Parliament, charter, or custom in force immediately before the commencement of this Act:

To arrange the limits of pilotage districts:

(6.) To make such arrangement with any other pilotage authority for altering the limits of their respective districts, and for extending the powers of such other authority or the privileges of the pilots licensed by such other authority or any of them to all or any part of its own district, or for limiting its own powers or the privileges of its own pilots or any of them, or for sharing the said last-mentioned powers and privileges with the said other authority and the pilots licensed by it, or for delegating or surrendering such powers and privileges or any of them to any other pilotage authority either already constituted or to be constituted by agreement between such authorities, and to the pilots licensed by it, as may appear to such pilotage authorities to be desirable for the purpose of facilitating navigation or of reducing charges on shipping:

To establish funds for superannuated pilots:

(7.) To establish, either alone or in conjunction with any other pilotage authority or authorities, funds for the relief of superannuated or infirm qualified pilots, or of their wives, widows, or children, or to make any new regulations with respect to any funds already applicable to the above purposes or any of them, with power to determine the amount, manner, time, and persons (such persons to be in the service of such pilotage authority) to and in which and by and upon whom the contributions in support of such existing or future funds may be made or levied; and further, to declare the persons or class of persons (such persons or class of persons being confined to men in the service of such pilotage authority, their wives, widows, or children), entitled to participate in the benefits of such existing or future funds, and the terms and conditions upon which they are to be so entitled:

To alter byelaws.

(8). To repeal or alter any byelaw made in exercise of the above powers, and to make a new byelaw or new byelaws in lieu thereof:

And every byelaw duly made by any pilotage authority in exercise of the powers hereby given to it shall be valid and effectual, notwithstanding any Act of Parliament, rule, law, or custom to the contrary.

As to when a pilot may claim extra remuneration as a salvor, see sec. 483, p. 405.

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Power of pilotage authorities to exempt from compulsory pilotage.

25 & 26 Vict. c. 63, s. 39.—Whereas it is enacted by the principal Act that every pilotage authority shall have power, in manner and subject to the conditions therein mentioned, to do the following things; (that is to say,)

To exempt the masters of any ships or of any classes of ships from being compelled to employ qualified pilots:

To alter and reduce rates of pilotage.

To lower and modify the rates and prices or other remuneration to be demanded and received for the time being by pilots licensed by such authority:

To arrange the limits of pilotage districts.

To make arrangements with any other pilotage authority for altering the limits of their respective districts, and for extending the powers of such other authority, and transferring its own powers to such last-mentioned authority:

Power by Provisional Order,—

And whereas it is expedient that increased facilities should be given for effecting the objects contemplated by the said recited enactments, and for further amending the law concerning pilotage, and that in so doing means should be afforded for paying due regard to existing interests and to the circumstances of particular cases: Be it enacted, that it shall be lawful for the Board of Trade, by Provisional Order, to do the following things; that is to say,

To transfer pilotage jurisdiction.

(1.) Whenever any pilotage authority residing or having its place of business at one port has or exercises jurisdiction in matters of pilotage in any other port, to transfer so much of the said jurisdiction as concerns such last-mentioned port to any harbour trust or other body exercising any local jurisdiction in maritime matters at the last-mentioned port, or to any body to be constituted for the purpose by the Provisional Order, or, in cases where the said pilotage authority is not the Trinity House of Deptford Strond, to the said Trinity House; or to transfer the whole or any part of the jurisdiction of the said pilotage authority to a new body corporate or body of persons to be constituted for the purpose by the Provisional Order, so as to represent the interests of the several ports concerned:

And to make consequent arrangements.

(2.) To make the body corporate or persons to whom the said transfer is made a pilotage authority within the meaning of the Principal Act, with such powers for the purpose as may be in the Provisional Order in that behalf mentioned:

To determine the limits of the district of the pilotage authority to which the transfer of jurisdiction is made:

To sanction a scale of pilotage rates to be taken by

TABLE U [referred to in Sec. 333, sub-s. (5)].

RATES OF PILOTAGE TO BE DEMANDED AND RECEIVED BY QUALIFIED PILOTS FOR PILOTING SHIPS WITHIN THE UNDER-MENTIONED LIMITS.

OUTWARDS.

FROM	TO	7 Ft. and under.	8 Ft.	9 Ft.	10 Ft.	11 Ft.	12 Ft.	13 Ft.	14 Ft.	15 Ft.	16 Ft.	17 Ft.	18 Ft.	19 Ft.	20 Ft.	21 Ft.	22 Ft.	23 Feet and upwards
		£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
The Sea, Orfordness, the Downs, Hoseley Bay, and *vice versâ*	Nore Warps	3 13 6	4 2 9	4 12 0	5 1 3	5 5 9	6 5 0	6 13 6	7 7 3	7 16 6	8 14 9	9 8 6	10 17 6	11 10 0	12 17 6	14 5 3	16 11 3	18 8 0
	Gravesend, Chatham, Standgate Creek, or Blackstakes	4 12 0	5 7 9	6 3 3	6 18 0	7 11 9	8 5 6	8 19 6	9 13 3	10 7 0	11 0 9	11 14 6	14 1 6	16 13 0	19 6 6	21 5 0	23 3 9	25 2 3
	Long Reach	4 16 6	5 12 3	6 8 0	7 2 6	7 18 3	8 14 9	9 8 6	10 0 0	10 16 3	11 10 0	13 3 6	15 9 0	18 11 9	21 5 0	23 0 0	24 16 9	26 13 6
	Woolwich or Blackwall	5 5 9	6 1 6	6 17 0	7 11 9	8 10 3	9 4 0	10 2 6	11 0 9	11 14 6	12 8 6	14 3 6	16 5 9	19 11 0	22 1 6	24 16 9	27 12 0	—
	Moorings or London Docks	5 16 0	6 9 9	7 3 6	7 17 3	8 19 6	9 13 3	10 11 6	11 10 0	12 8 6	13 2 3	14 14 6	17 0 6	20 10 3	23 4 6	—	—	—
The Nore or Warps, and *vice versâ*	Gravesend, Standgate Creek, or Blackstakes	1 18 9	2 3 3	2 7 0	2 10 6	2 19 9	3 6 3	3 11 9	3 15 6	4 2 9	4 10 3	5 1 3	5 16 0	6 8 9	7 14 6	8 14 0	9 13 3	10 12 6
	Long Reach or Chatham	2 6 0	2 10 6	2 15 3	2 19 9	3 9 0	3 18 3	4 2 9	4 7 0	4 13 9	5 5 0	5 16 0	6 15 3	8 5 6	9 13 3	10 12 6	11 11 9	12 15
	Woolwich or Blackwall	2 15 3	3 1 9	3 8 0	3 13 6	4 2 9	4 10 3	4 19 0	5 8 6	5 16 0	6 4 3	7 2 6	8 3 9	9 4 0	11 11 9	12 11 3	13 16 0	—
	Moorings or London Docks	3 4 6	3 10 9	3 17 3	4 2 9	4 16 6	5 5 9	5 15 0	6 4 3	6 13 6	7 2 6	8 1 0	9 4 0	11 0 9	12 17 6	13 16 0	—	—
Gravesend Reach, and *vice versâ*	Long Reach	0 9 3	0 14 9	1 0 3	1 5 3	1 10 0	1 14 6	1 19 0	2 3 9	2 8 3	2 13 0	2 17 6	3 2 0	3 6 9	3 11 3	4 12 0	5 10 6	—
	Woolwich or Blackwall	1 3 0	1 7 6	1 12 3	1 16 9	2 4 3	2 13 6	3 2 6	3 11 9	3 18 3	4 5 6	4 13 9	5 1 2	6 4 3	7 11 9	8 19 6	9 13 3	—
	Moorings or London Docks	1 7 6	1 14 0	2 0 6	2 6 0	2 15 3	3 4 6	3 13 6	4 2 9	4 12 0	5 1 3	5 10 6	5 19 6	7 7 3	8 14 9	—	—	—
	Sheerness, Standgate Creek, or Blackstakes	2 15 3	2 19 0	3 1 9	3 4 6	3 13 6	4 2 9	4 12 0	5 1 3	5 10 6	5 19 6	6 8 9	6 18 0	7 7 3	7 16 5	—	—	—
	Chatham	3 4 6	3 8 0	3 10 9	3 13 6	4 2 9	4 12 0	5 1 3	5 10 6	5 19 6	6 8 9	6 18 0	7 7 3	7 16 5	8 5 6	—	—	—
Long Reach and *vice versâ*	Woolwich or Blackwall	0 18 6	1 2 0	1 4 9	1 7 6	1 16 9	2 6 0	2 15 3	3 4 6	3 13 6	4 2 9	4 12 0	5 3 6	5 16 0	6 8 9	8 5 6	9 4 0	—
	Moorings or London Docks	1 7 6	1 11 3	1 14 0	1 16 9	2 6 0	2 15 3	3 4 6	3 13 6	4 2 9	4 12 0	5 3 6	5 16 0	6 8 9	7 7 3	9 4 0	—	—
	Sheerness, Standgate Creek, or Blackstakes	3 4 6	3 8 0	3 10 9	3 13 6	4 2 9	4 12 0	5 1 3	5 10 6	5 19 6	6 8 9	6 18 0	7 7 3	7 17 6	8 5 6	8 14 9	—	—
	Chatham	3 13 6	3 17 3	4 0 0	4 2 9	4 12 0	5 1 3	5 10 6	5 19 6	6 8 9	6 18 0	7 7 3	7 16 6	8 5 6	8 14 9	9 4 0	—	—
Woolwich or Blackwall, and *vice versâ*	Moorings or London Docks	0 18 6	1 2 0	1 4 9	1 7 6	1 10 0	1 12 3	1 16 9	2 1 6	2 6 0	2 10 6	2 15 3	2 19 9	3 4 6	3 9 0	—	—	—
	Sheerness, Standgate Creek, or Blackstakes	3 13 6	3 17 3	4 0 0	4 2 9	4 12 0	5 1 3	5 10 6	5 19 6	6 8 9	6 18 0	7 7 3	7 16 6	8 5 6	8 14 9	—	—	—
	Chatham	4 2 9	4 6 6	4 9 3	4 12 0	5 1 3	5 10 6	5 19 6	6 8 9	6 18 0	7 7 3	7 17 6	8 5 6	8 14 9	9 4 0	—	—	—

TABLE U—(*continued*).

INWARDS.

From	To	Under 7 Ft.	From 7 Ft. to 10 Ft.	11 Ft.	12 Ft.	13 Ft.	14 Ft.	15 Ft.	16 Ft.	17 Ft.	18 Ft.	19 Ft.	20 Ft.	21 Ft.	22 Ft.	23 Feet and upwards.
		£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
The Downs.	Nore, Sheerness, Standgate Creek, Gravesend	5 5 0	7 17 6	8 13 3	9 9 0	10 4 9	11 0 6	11 16 3	12 12 0	13 7 9	16 1 3	19 0 0	22 1 0	24 5 0	26 9 2	28 13 3
	Long Reach	5 16 0	8 8 6	9 9 0	10 4 10	11 3 0	11 18 10	12 18 3	13 14 0	15 0 9	17 14 4	21 4 2	24 5 1	26 9 2	28 13 3	30 17 4
	Blackwall or London	6 12 3	8 19 6	10 4 9	11 0 6	12 1 6	12 17 3	14 0 4	14 16 0	16 13 9	19 7 5	23 8 3	26 9 2	28 13 3	—	—
Standgate Creek	Gravesend	3 6 2	3 17 0	4 8 2	4 19 0	5 10 3	6 1 3	6 12 3	7 3 3	7 14 4	8 5 4	8 16 4	9 7 4	—	—	—

NOTE 1.—Foreign ships are to pay one-fourth more than British ships, except when privileged to enter the ports of the United Kingdom upon paying the same duties of tonnage as are paid by British ships, in which cases such ships are to pay the same rates of pilotage only as are payable by British ships.

NOTE 2.—For half a foot exceeding the above draughts of water, the medium price between the two limits.—For intermediate distances a proportionate rate.

For putting a Pilot on board, and for Pilotage of Ships to the Anchorage to the Downs.*	60 Tons, and under 150.	150 Tons, and under 250.	250 Tons, and under 400.	400 Tons, and under 600.	600 Tons, and upwards.
	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
From off Dungeness to off Folkestone; the Church bearing N.N.W. by compass	2 0 0	3 0 0	3 10 0	4 0 0	5 5 0
From off Folkestone to the South Foreland, the Lights in one	1 10 0	2 0 0	2 10 0	3 0 0	4 4 0
From off the South Foreland to the Downs	1 5 0	1 5 0	1 10 0	2 0 0	3 3 0

* When the pilot is put on board by a boat from the shore, one seventh to the pilot, and the remaining six sevenths to the boat and crew.

In the River Thame above Gravesend.

For a boat of a class carrying an anchor of above 4 cwt. with a corresponding tow line £2 2 0
" " Do. Do. " 2 cwt. 1 1 0
" " Do. Do. under 2 cwt. 0 15 0

Per trip for the whole distance from Gravesend to London; and in proportion for any part of that distance.

And for each man's service in those boats, 8*s.* per tide.

For removing a ship from moorings into a dry or wet dock:

For a ship under 300 tons . . . 0 15 0
" " 300 to 600 " 1 1 0
" " 600 to 1,000 " 1 11 6
" " above 1,000 " . . . 2 2 0

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the pilots to be licensed by the last-mentioned pilotage authority:

To determine to what extent and under what conditions any pilots already licensed by the former pilotage authority shall continue to act under the new pilotage authority:

To sanction arrangements for the apportionment of any pilotage funds belonging to the pilots licensed by the former pilotage authority between the pilots remaining under the jurisdiction of that authority and the pilots who are transferred to the jurisdiction of the new authority:

To provide for such compensation or superannuation as may be just to officers employed by the former pilotage authority and not continued by the new authority:

To constitute new authorities.

(3.) To constitute a pilotage authority and to fix the limits of its district in any place in the United Kingdom where there is no such authority; so, however, that in the new pilotage districts so constituted there shall be no compulsory pilotage, and no restriction on the power of duly qualified persons to obtain licenses as pilots:

To exempt from compulsory pilotage in any district.

(4.) To exempt the masters and owners of all ships, or of any classes of ships, from being obliged to employ pilots in any pilotage district or in any part of any pilotage district, or from being obliged to pay for pilots when not employing them in any district or in any part of any pilotage district, and to annex any terms and conditions to such exemptions:

To enable existing authorities to grant licenses and fix rates.

(5.) In cases where the pilotage is not compulsory, and where there is no restriction on the power of duly qualified persons to obtain licenses as pilots, to enable any pilotage authority to license pilots and fix pilotage rates for any part of the district within the jurisdiction of such authority for which no such licenses or rates now exist:

To raise rates.

(6.) In cases where the pilotage is not compulsory, and where there is no restriction on the power of duly qualified persons to obtain licenses as pilots, to enable any pilotage authority to raise all or any of the pilotage rates now in force in the district or any part of the district within the jurisdiction of such authority:

To facilitate recovery of rates in certain cases.

(7.) In cases where the pilotage is not compulsory, and where there is no restriction on the number of pilots, or on the power of duly qualified persons to obtain licenses as pilots, to give additional facilities for the recovery of pilotage rates and for the prevention of the employment of unqualified pilots:

(8.) To give facilities for enabling duly qualified persons, after proper examination as to their qualifications, to obtain licenses as pilots. To facilitate grants of licenses.

25 & 26 Vict. c. 63, s. 40.—The following rules shall be observed with respect to provisional orders made in pursuance of this Act: Regulations with respect to manner of making and confirming provisional orders.

(1.) Application in writing for such order shall be made to the Board of Trade by some persons interested in the pilotage of the district or in the operation of the laws or regulations relating to such pilotage:

(2.) Notice of such application having been made shall be published once at the least in each of two successive weeks in the month immediately succeeding the time of such application in the *Shipping Gazette*, and in some newspaper or newspapers circulating in the county, or, if there are more than one, in the counties adjacent to the pilotage district to be affected by the order:

(3.) The notice so published shall state the objects which it is proposed to effect by the provisional order:

(4.) The Board of Trade on receiving the application shall refer the same to the pilotage authority or authorities of the district, and shall receive and consider any objections which may be made to the proposed provisional order, and shall for that purpose allow at least six weeks to elapse between the time of referring the application to the pilotage authority and the time of making the provisional order:

(5.) The Board of Trade shall, after considering all objections, determine whether to proceed with the provisional order or not; and shall, if they determine to proceed with it, settle it in such manner and with such terms and conditions, not being inconsistent with the provisions of this Act, as they may think fit; and shall, when they have settled the same, forward copies thereof to the persons making the application and to the pilotage authority or authorities of the district or districts to which it refers: Board of Trade to consider objections.

(6.) No such provisional order shall take effect unless and until the same is confirmed by Parliament; and for the purpose of procuring such confirmation the Board of Trade shall introduce into Parliament a public general bill, or public general bills, in which, or in the schedule to which, the provisional order or provisional orders to be thereby confirmed shall be set out at length: Provisional orders to be confirmed by Parliament.

(7.) If any petition is presented to either House of Parliament against any such provisional order as aforesaid in the progress through Parliament of the bill confirming Petitions to be referred to select committee.

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the same, so much of the bill as relates to the order so petitioned against may be referred to a select committee, and the petitioner shall in such case be allowed to appear and oppose as in the case of private bills.

Publication of byelaws.

334. Every bye-law proposed to be enacted by any pilotage authority in pursuance of the foregoing powers shall, before it is submitted to Her Majesty in Council for her assent, be published in such manner as may from time to time be prescribed by the Board of Trade.

Byelaws to be laid before parliament.

335. Every Order in Council made in pursuance of the provisions hereinbefore contained shall be laid before both Houses of Parliament as soon as possible after the making thereof.

Power of appeal to Board of Trade by persons aggrieved by byelaw.

336. If the greater part in number of the qualified pilots belonging to any port, or the local marine board, where there is one, or at any port where there is no local marine board, if any masters, owners, or insurers of ships, being not less than six in number, consider themselves aggrieved by any regulation or byelaw in force when this Act comes into operation or hereafter made under some authority other than the provisions of this Act, or by any defect or omission therein, they may appeal to the Board of Trade, and the said board may thereupon revoke or alter any such regulation or byelaw or may make additions thereto in such manner as, having regard to the interests of the persons concerned may appear to be just and expedient; and every order so made shall be conclusive in the matter.

Returns by Pilotage Authorities (General).

Pilotage authorities to make full returns to the Board of Trade of certain particulars connected with pilotage.

337. Every pilotage authority shall deliver periodically to the Board of Trade, in such form and at such times as such board requires, returns of the following particulars with regard to pilotage within the port or district under the jurisdiction of such authority; (that is to say,)

(1.) All byelaws, regulations, orders, or ordinances relating to pilots or pilotage for the time being in force:

(2.) The names and ages of all pilots or apprentices licensed or authorised to act by such authority, and of all pilots or apprentices acting either mediately or immediately

under such authority, whether so licensed or authorised or not:

(3.) The service for which each pilot or apprentice is licensed:

(4.) The rates of pilotage for the time being in force, including therein the rates and descriptions of all charges upon shipping made for or in respect of pilots or pilotage:

(5.) The total amount received for pilotage, distinguishing the several amounts received from British ships and from foreign ships respectively, and the several amounts received in respect of different classes of ships paying different rates of pilotage, according to the scale of such rates for the time being in force, and the several amounts received for the several classes of service rendered by pilots; and also the amount paid by such ships (if any) as have before reaching the outer limits of pilotage water if outward-bound, or their port of destination if inward-bound, to take or pay for two or more pilots, whether licensed by the same or by different pilotage authorities; together with the numbers of the ships of each of the several classes paying such several amounts as aforesaid:

(6.) The receipt and expenditure of all monies received by or on behalf of such authority, or by or on behalf of any sub-commissioners appointed by them, in respect of pilots or pilotage:

And shall allow the Board of Trade, or any persons appointed by such board for the purpose to inspect any books or documents in its possession relating to the several matters hereinbefore required to be returned to the Board of Trade.

If local authorities fail to give the required returns, their jurisdiction may be transferred to the Trinity House.

338. If any of such pilotage authorities as aforesaid (other than the Trinity House, or sub-commissioners of pilotage appointed by it, as hereinafter mentioned,) fail to deliver to the Board of Trade the periodical returns hereinbefore required within one year of such time as may be fixed by such board for the purpose, or if any of such authorities do not allow the said board, or any persons who may be appointed by it for the purpose, to inspect any books or documents in their possession relating to the matters hereinbefore required to be returned by

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them, it shall be lawful for Her Majesty, by and with the advice of her Privy Council, to direct that all the rights and powers of such authorities in respect of pilotage shall cease or be suspended during such time as Her Majesty directs; and thereupon the Trinity House shall thereafter, or during such time as such suspension may continue, have and exercise the same powers of appointing sub-commissioners of pilotage, and of licensing pilots, and of establishing and altering rates of pilotage, within the district within which the authority so making default has previously appointed or licensed pilots, as it is by this Act authorised to exercise in any district for which no particular provision is made by any Act of Parliament or charter for the appointment of pilots, and shall also during such time as aforesaid have and exercise the same rights, title, and powers to and in respect of any pilotage funds or other pilotage property which the said pilotage authorities would or might have had or exercised if not so suspended as aforesaid.

Returns to be laid before parliament.

339. The Board of Trade shall without delay cause the several returns hereinbefore required to be made to such board to be laid before both Houses of Parliament.

Licensing of Masters and Mates (General).

Master or mate, if examined and passed, to receive a pilotage certificate, enabling him to pilot particular ships.

340. The master or mate of any ship may, upon giving due notice, and consenting to pay the usual expenses, apply to any pilotage authority to be examined as to his capacity to pilot the ship of which he is master or mate, or any one or more ships belonging to the same owner, within any part of the district over which such pilotage authority has jurisdiction; and such master or mate shall, if such authority thinks fit, thereupon be examined; and if found competent a pilotage certificate shall be granted to him, containing his name, a specification of the ship or ships in respect of which he has been examined, and a description of the limits within which he is to pilot the same, such limits to be within such jurisdiction as aforesaid; and such certificate shall enable the person therein named to pilot the ship or any of the ships therein specified, of which he is acting as master or mate at the time, but no other, within the limits therein described, without incurring any penalties for the non-employment of a qualified pilot.

Mere granting not sufficient.

A mere granting of a certificate is not sufficient according to the true intent of this section, to enable the master to pilot the ship specified.

It is necessary that the certificate should be producible, that the master should not only have cognisance of it, but have it ready to produce. If this were not requisite, how could a licensed pilot, offering his services within the district, be assured that the vessel was exempt? The master is described in the certificate, to assist in his identification as the holder of it (*t*). And for the same reasons the pilot is bound to have the evidence of his authority with him, and be able at all times to produce it (*u*).

License for ships of same owner.

By Order in Council, dated 16th July, 1857, Any master or mate who holds a pilotage certificate granted by the Trinity House under this Act, enabling him to pilot any ship or ships, shall be qualified to pilot any other ship or ships belonging to the same owner or owners as the ship or ships for which his certificate was granted within the limits described in such certificate, without being compelled to employ a pilot, on the following conditions, viz. :—

Same draught of water.

The ship or ships which he is so qualified to pilot shall be of no greater draught of water than the ship or ships in respect of which his certificate was granted.

Name of ship in certificate.

The name and description of every ship which he is so qualified to pilot shall have been by or with the consent of the Trinity House first added to, or indorsed upon, his certificate.

Renewal of pilotage certificate.

341. The pilotage certificate so granted shall not be in force for more than one year, unless the same is renewed, which may from time to time be done by an endorsement under the hand of the secretary or other proper officer of the authority by whom such certificate was granted.

Board of Trade to examine and grant pilotage certificates to mates, on pilotage authorities refusing to do so.

342. If upon complaint to the Board of Trade it appear to such board that any such authority as aforesaid has without reasonable cause refused or neglected to examine any master or mate who has applied to them for the purpose, or after he has passed the examination has, without reasonable cause refused or neglected to grant him a pilotage certificate, or that the examination of any such master or mate has been unfairly or improperly conducted, or that any terms imposed or sought to be imposed by such authority are unfair or improper, or that any pilotage certificate granted by such authority has been improperly withdrawn, the Board of Trade may, if in its judgment the circumstances appear to require it, appoint persons to examine such master or mate, and if he is found competent may grant him a pilotage certificate, containing the same particulars as would have been inserted in any certificate granted by such pilotage authorities as aforesaid,

(*t*) *The Killarney*, Lush. 210 ; 1 Mar. Law Cas. 121.

(*u*) *Hammond* v. *Blake*, 10 B. & C. 424 ; *Commonwealth* v. *Ricketson*, 46 Mass. (Amer. Rep.), 412. See sec. 351, p. 319.

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upon such terms and conditions, and subject to such regulations, as such board may think fit; and such certificate shall have the same effect as if it had been granted by such pilotage authority as aforesaid; and such certificate shall be in force for one year, and may be renewed from year to year, either by the said authorities in manner hereinbefore mentioned, or by the Board of Trade, if such board thinks fit, such renewal to be indorsed on the said certificate, either by such person as the Board of Trade may appoint for the purpose, or in manner hereinbefore provided as to certificates granted by any pilotage authority.

Fees to be paid upon such certificates and the renewals thereof.

343. All masters or mates to or for whom any such pilotage certificates as aforesaid are granted or renewed by any pilotage authority shall pay to such authority, or as it directs, such fees upon their respective certificates and upon the renewals thereof, as are from time to time fixed for that purpose by such authority, with the consent of the Board of Trade; and all masters and mates to or for whom any such certificates are granted or renewed by the Board of Trade shall pay to such board, or as it directs, such fees upon their certificates and upon the renewals thereof as may be fixed by such board, so nevertheless that in the case of pilotage certificates granted or renewed by the Board of Trade such fees shall in no case be less than the fees payable by the qualified pilots in the same district upon their licenses and the renewal thereof; and such fees shall in the case of certificates and renewals granted by pilotage authorities be applicable either to paying the expense of the examinations, or any other general expenses connected with pilotage incurred by such authorities, or to the pilot's superannuation fund of the district (if any), or otherwise for the benefit of the pilots appointed by such authorities, as such authorities think fit; and such fees shall in the case of pilotage certificates granted or renewed by the Board of Trade be applicable to the expense of the examinations, and the surplus (if any) shall be applied for the benefit of the qualified pilots of the port or district to which such certificates apply, in such manner as such board thinks fit.

Power to withdraw pilotage certificates.

344. If at any time it appears to the Board of Trade or to any pilotage authority that any master or mate to whom a pilotage certificate has been granted by such board or authority has been guilty of misconduct, or has shown himself incom-

petent to pilot his ship, such board or such authority (as the case may be) may thereupon withdraw his certificate, and such certificate shall thenceforth cease to be of any effect whatever.

As to offences of pilots, see sec. 365, p. 326.

Pilot Boats (General).

Pilot boats how to be provided.

345. All boats and ships regularly employed in the pilotage service of any district shall be approved and licensed by the pilotage authority of such district, who may, at their discretion, appoint and remove the masters of such boats and ships.

Characteristics of pilot boats.

346. Every pilot boat or ship shall be distinguished by the following characteristics; (that is to say,)

Colour.

(1.) A black colour painted or tarred outside, with the exception of such names and numbers as are hereinafter mentioned; or such other distinguishing colour or colours as the pilotage authority of the district, with the consent of the Board of Trade directs:

Name.

(2.) On her stern the name of the owner thereof and the port to which she belongs painted in white letters at least one inch broad and three inches long, and on each bow the number of the license of such boat or ship:

Flag.

(3.) When afloat, a flag at the mast-head or on a sprit or staff, or in some other equally conspicuous situation; such flag to be of large dimensions compared with the size of the boat or ship carrying the same, and to be of two colours, the upper horizontal half white, and the lower horizontal half red:

Duties of master.

And it shall be the duty of the master of such boat or ship to attend to the following particulars: first, that the boat or ship possesses all the above characteristics; secondly, that the aforesaid flag is kept clean and distinct, so as to be easily discerned at a proper distance; and, lastly, that the names and numbers before mentioned are not at any time concealed; and if default is made in any of the above particulars he shall incur a penalty not exceeding 20*l.* for each default.

Additional Marks.

Number and initial of port.

In addition to the marks required by this section, it is ordered by the Trinity House that all pilot vessels licensed by them shall have the

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number of such vessel and the initial letter of the port to which she belongs, painted black on the mainsail and trysail thereof. That the figure or figures of such number and the initial letter of the port shall be six feet in length, and of proportionate breadth; and that the said number shall be placed immediately above the centre of the line from the throat to the leach of the mainsail, and the initial letter immediately beneath the said number. Also, that the license of every pilot vessel shall be immediately withdrawn on board of which, while holding any license as such any main or trysail shall be found not marked in the manner hereinbefore directed.

See Art. VIII. of the Rules of the Sea, p. 270, as to what lights pilot vessels carry. See 36 & 37 Vict. c. 85, s. 19, under s. 330, p. 302, as to what signals are to be made for pilots.

Qualified pilot to display flag though not in pilot boat.

347. Whenever any qualified pilot is carried off in a boat or ship not in the pilotage service he shall exhibit a flag of the above description, in order to show that such boat or ship has a qualified pilot on board; and if he fails to do so, without reasonable cause, he shall incur a penalty not exceeding 50*l.*

Penalty on ordinary boat displaying pilot flag.

348. If any boat or ship, not having a licensed pilot on board, displays a flag of the above-mentioned description, there shall be incurred for every such offence a penalty not exceeding 50*l.*, to be recovered from the owner or from the master of such boat or ship.

Pilot Licenses (General).

Registry of pilot license.

349. Every qualified pilot on his appointment shall receive a license, containing his name and usual place of abode, together with a description of his person, and a specification of the limits within which he is qualified to act: and it shall be the duty of the principal officer of customs at the place at or nearest to which any qualified pilot may reside, upon his request, to register his license; and no qualified pilot shall be entitled to act as such until his license is so registered; and any qualified pilot acting beyond the limits for which he is qualified by his license shall be considered an an unqualified pilot.

Pilotage authority may grant special sea licenses.

35 & 36 Vict. c. 73, s. 11.—Any pilotage authority may, if authorised in that behalf by Order in Council, grant special licenses qualifying the persons to whom they are granted to act as pilots for any part of the sea or channels beyond the limits of any pilotage authority, so however that no pilot so licensed be entitled to supersede an unlicensed pilot outside the limits of the authority by which he is licensed.

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The whole policy of the pilotage system of this country is to confer a local jurisdiction to grant licenses within such limits that the persons entrusted with the navigation of vessels shall have knowledge of the dangers within those limits. Hence the license granted to a pilot for a certain district is of no avail beyond that district (*x*).

Policy of pilotage system.

350. Every qualified pilot shall, upon receiving his license, be furnished with a copy of such part of this Act as relates to pilotage, together with a copy of the rates, byelaws, and regulations established within the district for which he is licensed; and he shall produce such copies to the master of any ship, or other person employing him, when required to do so, under a penalty in case of default not exceeding 5*l.*

Copies of regulations to be furnished to qualified pilot, and to be produced by him.

351. Every qualified pilot, while acting in that capacity, shall be provided with his license, and produce the same to every person by whom he is employed, or to whom he tenders his services as pilot; and if he refuses to do so at the request of such person, he shall incur for each offence a penalty not exceeding 10*l.*, and shall be subject to suspension or dismissal by the pilotage authority by whom he is licensed.

Qualified pilot to produce license to employer.

352. Every qualified pilot, when required by the pilotage authority who appointed him, shall produce or deliver up his license; and on the death of any qualified pilot the person into whose hands his license happens to fall shall without delay transmit the same to the pilotage authority who appointed the deceased pilot; and any pilot or person failing to comply with the provisions of this section shall incur a penalty not exceeding 10*l.*

Licenses to be delivered up, when required and returned on death.

The pilot holds his appointment during the pleasure of the authority that appoints him, and therefore he will be liable to the penalty for refusing to give up the license, however arbitrary or unreasonable the request to give it up may be (*y*).

Compulsory Pilotage (Generally).

The sections under this heading apply to the Trinity House district, although by sec. 376 *et seq.*, special provisions are made for that district (*z*). The theory of the Legislature, whether right or wrong, must be taken to be that compulsory pilotage is not a charge upon vessels but rather a regulation instituted for their benefit (*a*).

(*x*) *Hossack* v. *Gray*, 6 B. & S. 613.

(*y*) *Henry* v. *Newcastle Trinity House Board*, 8 E. & B. 723: 27 L. J. M. C. 57.

(*z*) *R.* v. *Stanton*, 8 E. & B. 445; *The Earl of Auckland*, Lush. 178.

(*a*) *The Hannah*, L. R. 1 A. & E. 289; 15 L. T. N. S. 334; 36 L. J. (Ad.) 1; 2 Mar. Law Cas. 434.

§ 353. Compulsory pilotage, in what mode to be enforced.

353. Subject to any alteration to be made by any pilotage authority in pursuance of the power hereinbefore in that behalf given, the employment of pilots shall continue to be compulsory in all districts in which the same was by law compulsory immediately before the time when this Act comes into operation; and all exemptions from compulsory pilotage then existing within such districts shall also continue in force; and every master of any unexempted ship navigating within any such district who, after a qualified pilot has offered to take charge of such ship or has made a signal for that purpose, either himself pilots such ship without possessing a pilotage certificate enabling him so to do, or employs or continues to employ an unqualified person to pilot her, and every master of any exempted ship navigating within any such district who after a qualified pilot has offered to take charge of such ship or has made a signal for that purpose employs or continues to employ an unqualified pilot to pilot her, shall for every such offence incur a penalty of double the amount of pilotage demandable for the conduct of such ship.

Exemptions from Compulsory Pilotage.

Exemptions under 6 Geo. IV. c. 125, s. 59.

The exemptions referred to in the first part of the section, are contained in 6 Geo. IV. c. 125. They still continue in force, although the Act of 6 Geo. IV. c. 125 is repealed by 17 & 18 Vic. c. 120 (which took effect at the same time as the principal Act), because they existed at the time when this section came into force (*b*).

Ships trading to Norway, &c.

To ports between Boulogne and the Baltic.

* *Sic.*

Irish traders in the Thames.

Ships with stone from Guernsey, &c.

By 6 Geo. IV. c. 125, s. 59, the master of any collier, or of any ship or vessel trading to Norway, or to the Cattegat or Baltic, or round the North Cape, or into the White Sea, on their inward or outward voyages, or of any constant trader inwards from the ports between Boulogne inclusive and the Baltic (all such ships and vessels having British Registers, and coming up either *by the North Channel, but not otherwise), or of any Irish trader using the navigation of the rivers Thames and Medway, or of any ship or vessel employed in the regular coasting trade of the Kingdom, or of any ship or vessel wholly laden with stone from Guernsey, Jersey, Alderney, Sark, or Man, and being the production thereof, or of any ship or vessel not exceeding the burthen of fifty tons, and having a British Register, except as hereinafter provided; or of any other ship or vessel whatever, whilst the same is within the limits of the port or place to which she belongs, the same not being a port or place in relation to which particular provision hath heretofore been made by any Act or Acts of Parliament, or by any charter or charters for the appointment of pilots, shall and may lawfully and without being subject to any of the penalties by this Act imposed, conduct or pilot his

Vessels at their home ports.

(*b*) *R.* v. *Stanton*, 8 E. & B. 445; *The Earl of Auckland*, Lush. 164, 387; 15 Moo. P. C. 304; 5 L. T. N. S. 558; 1 Mar. Law Cas. 27, 177.

own ship or vessel when and so long as he shall conduct or pilot the same without the aid or assistance of any unlicensed pilot or other person or persons than the ordinary crew of the said ship or vessel.

Section 60 of 6 Geo. IV. c. 125, gives powers to Her Majesty in Council to exempt certain other ships from compulsory pilotage.

Exemption in certain cases if master is an owner.

By section 62, if the master or mate is the owner or part owner of the ship, and resides at Dover, Deal, or the Isle of Thanet, he may pilot his ship *from* (*c*) such place up and down the Thames and Medway, and to any place within the jurisdiction of the Cinque Ports (for the extent of this jurisdiction, see under sec. 460, p. 386).

When the ship has been brought into port.

Section 63. When a vessel has been brought into port by a qualified pilot, the master may, without the assistance of a qualified pilot, change her moorings, or take her into any dock (see sec. 362, p. 325).

Foreign vessels.

By 4 Geo. IV. c. 77, s. 5, foreign vessels of less than sixty tons burden are exempt from compulsory pilotage in those cases where similar British vessels are exempt, any law, custom, or usage to the contrary notwithstanding.

Order in Council exempting certain ships.

By an Order in Council, 18th February, 1854, the masters of the under-mentioned ships and vessels shall, subject to the provisions of 6 Geo. IV. c. 125, s. 59, in respect of the employment of unlicensed persons, be exempted from compulsory pilotage:

Ships trading to Norway, &c., coming up south channels.

Of ships and vessels trading to Norway, or to the Cattegat or Baltic, or round North Cape, or into the White Sea, when coming up the *South* channels;

Ships trading between Boulogne and Baltic, coming up south channels.

Of ships and vessels trading to ports between Boulogne (inclusive) and the Baltic, on their outward passages, and when coming up by the south passages.

The effect of this Order in Council, and of sec. 59 of 6 Geo. IV. c. 125, when construed together, is to create a peculiar and anomalous system of exemption.

Anomalous system of exemption thus created.

By section 59, vessels from Norway, &c., coming up by the *North* channel are exempt from compulsory pilotage if they have a British register; whereas by the Order in Council, vessels from Norway, &c., coming up by the *South* channel, are exempt whatever their register may be. Therefore a foreign vessel from Norway, &c., coming up the *North* channel, must have a pilot, and the same vessel coming up the *South* channel, need not have one. Dr. Lushington, in deciding this, said, "It would be easier for the Court to acquiesce in such an anomaly, or to hold that the condition of a British register, as expressed in the statute, was understood in the Order of Council extending the exemption of that statute, than to hold that an express provision of a statute had been thus tacitly repealed by implication in an Order of Council made in pursuance of the statute" (*d*).

Exemptions from compulsory pilotage of ships passing through pilotage district.

25 & 26 Vict. c. 63, s. 41.—The masters and owners of ships passing through the limits of any pilotage district in the United Kingdom on their voyages between two places both situate out of such districts, shall be exempted from any obligation to employ a pilot within such district, or to pay pilot-

(*c*) *Peake* v. *Screech*, 7 Q. B. 603.

(*d*) *The Hannah*, L. R. 1 A. & E. 291; 15 L. T. N. S. 334; 36 L. J. (Ad.) 1; 2 Mar. Law Cas. 434.

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age rates when not employing a pilot within such district: provided that the exemption contained in this section shall not apply to ships loading or discharging at any place situate within such district, or at any place situate above such district on the same river or its tributaries.

As to pilots for exempted vessels, and their qualifications, see sec. 332, p. 304, and as to the rules that apply specially to Trinity House, see sec. 376, p. 331, and for the exemptions, sec. 379, p. 333.

No penalty will be imposed unless a qualified pilot offers to take charge of the vessel (*e*), and the offer must come to the master's knowledge (*f*). Under a previous Act (*g*), a master was held liable for the penalty in having discharged a Cinque Port pilot in Standgate Creek, and then dropped a mile down the port of Rochester with a signal flying for a Trinity House pilot, who came on board at Sheerness (*h*). (For the limits of the Cinque Ports, see under sec. 460, p. 386, and for the limits of the port of London, see sec. 379, sub-s. (5), p. 334).

Home-trade passenger ships to employ qualified pilots, unless they have certificated masters or mates.

354. The master of every ship carrying passengers between any place situate in the United Kingdom, or the Islands of Guernsey, Jersey, Sark, Alderney, and Man, and any other place so situate, when navigating upon any waters situate within the limits of any district for which pilots are licensed by any pilotage authority under the provisions of this or of any other Act, or upon any part thereof so situate, shall, unless he or his mate has a pilotage certificate enabling such master or mate to pilot the said ship within such district, granted under the provisions hereinbefore contained, or such certificate as next hereinafter mentioned, being a certificate applicable to such district and to such ship, employ a qualified pilot to pilot his ship; and if he fails so to do he shall for every offence incur a penalty not exceeding 100*l.*

Although by sec. 353 any exemptions existing before the passing of the principal Act (1st May, 1855) are still continued, the vessels mentioned in this section are not exempted (*i*), unless the master obtains a certificate under the next section. For the special exemptions in Trinity House districts, see sec. 379, p. 333.

Certificates, how to be granted to such masters and mates.

355. Any master or mate of a ship which by the last preceding section is made subject to compulsory pilotage may apply to the Board of Trade for a certificate, and the Board of

(*e*) *Peake* v. *Carrington*, 5 Moore, 176; 2 B. & P. 399; *Commonwealth* v. *Ricketson*, 46 Mass. (Amer. Rep.), 412.
(*f*) *Chaney* v. *Payne*, 1 Q. B. 712.
(*g*) 52 Geo. III. c. 39.
(*h*) *Thornton* v. *Boland*, 2 Bing. 219.
(*i*) *The Temora*, Lush. 17.

Trade shall thereupon, on satisfactory proof of his having continuously piloted any ship within the limits of any pilotage district, or of any part or parts thereof for two years prior to the commencement of this Act, or upon satisfactory proof by examination of his competency or otherwise, as it may deem expedient, cause to be granted to him, or to be indorsed on any certificate of competency or service obtained by him under the Third Part of this Act, a certificate to the effect that he is authorised to pilot any ship or ships belonging to the same owner, and of a draft of water not greater than such draft as may be specified in the certificate within the limits aforesaid; and the said certificate shall remain in force for such time as the Board of Trade directs, and shall enable the master or mate therein named to conduct the ship or ships therein specified within the limits therein described to the same extent as if the last preceding section had not been passed, but not further or otherwise; and every such master or mate shall, upon applying for such certificate or for any renewal thereof, pay to the Board of Trade or as it directs such fees not exceeding the fees payable on an examination for a master's certificate of competency under the third part of this Act as the Board of Trade directs; and such fees shall be applied in the same manner in which the fees payable on such last-mentioned examination are made applicable.

For certificates of competency, see sec. 134 *et seq.* p. 119. By this section, the Board of Trade can only issue certificates to masters and mates of the ships described in sec. 354, and to no others (*k*).

Rights, Privileges, and Remuneration of Pilots (General).

Qualified pilot unable to board when entitled to pilotage.

356. If any boat or ship, having a qualified pilot on board, leads any ship which has not a qualified pilot on board when such last-mentioned ship cannot from particular circumstances be boarded, the pilot so leading such last-mentioned ship shall be entitled to the full pilotage for the distance run as if he had actually been on board and had charge of such ship.

Allowance to qualified pilot taken out of his district.

357. No pilot, except under circumstances of unavoidable necessity, shall without his consent be taken to sea or beyond the limits for which he is licensed in any ship whatever; and

(*k*) *The Earl of Auckland*, Lush. 164.

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every pilot so taken under circumstances of unavoidable necessity or without his consent shall be entitled, over and above his pilotage, to the sum of 10*s.* 6*d.* a day, to be computed from and inclusive of the day on which such ship passes the limit to which he was engaged to pilot her up to and inclusive of the day of his being returned in the said ship to the place where he was taken on board, or up to and inclusive of such day as will allow him, if discharged from the ship, sufficient time to return thereto; and in such last-mentioned case he shall be entitled to his reasonable travelling expenses.

Penalty on qualified pilot receiving or master offering improper rate.

358. Any qualified pilot demanding or receiving, and also any master offering or paying to any pilot, any other rate in respect of pilotage services, whether greater or less, than the rate for the time being demandable by law, shall for each offence incur a penalty not exceeding 10*l.*

Trinity House may modify rule as to pilotage rates.

35 & 36 Vict. c. 73, s. 9.—Notwithstanding anything in the 358th section of the Merchant Shipping Act, 1854, the Trinity House may, by byelaw, with the sanction of Her Majesty in Council, repeal or relax the provisions of that section within the whole or any part of their district, so far as to allow any pilot or class of pilots under their jurisdiction to demand or receive, and any master to offer or pay any rate less than the rate for the time being demandable by law.

Order in Council by which pilot may accept a rate less than the fixed rate.

By an Order in Council, 5th February, 1873 (*l*), the following bye-law of the Trinity House was approved:

From and after the 1st day of January, 1873, no pilot licensed by the Trinity House for the River Thames between Gravesend and London Bridge only shall incur any penalty for demanding or receiving in respect of the pilotage within the limits aforesaid of any ship exempted from compulsory pilotage, any rate less than the rate for the time being demandable by law in respect of such ship, and no master of any such ship shall incur any penalty for offering or paying in respect of the pilotage of any such ship within the limits aforesaid, any rate less than the rate for the time being demandable by law in respect of such ship, anything contained in the "Merchant Shipping Act, 1854," to the contrary notwithstanding.

Maritime Law.

By the ancient maritime law, if a pilot took advantage of a ship's necessities to make an outrageous contract for remuneration, the Court of Admiralty had an equity to moderate such a contract (*m*).

(*l*) See *London Gazette*, 11th Feb. 1873.
(*m*) *The Nelson*, 6 C. Rob. 231.

359. If any master, on being requested by any qualified pilot having the charge of his ship to declare her draught of water, refuses to do so, or himself makes or is privy to any other person making a false declaration to such pilot as to such draught, he shall incur a penalty for every such offence not exceeding double the amount of pilotage which would have been payable to the pilot making such request; and if any master or other person interested in a ship makes or is privy to any other person making any fraudulent alteration in the marks on the stern or stem post of such ship denoting her draught of water, the offender shall incur a penalty not exceeding 500*l.*

Penalty on making a false declaration as to draught of ship or falsifying marks.

For particulars required to be marked on British ships, see under sec. 34, p. 28.

360. A qualified pilot may supersede an unqualified pilot, but it shall be lawful for the master to pay to such unqualified pilot a proportionate sum for his services, and to deduct the same from the charge of the qualified pilot; and in case of dispute the pilotage authority by whom the qualified pilot is licensed shall determine the proportionate sums to which each party is entitled.

Power of qualified pilot to supersede unqualified pilot.

361. An unqualified pilot assuming or continuing in the charge of any ship after a qualified pilot has offered to take charge of her, or using a licence which he is not entitled to use for the purpose of making himself appear to be a qualified pilot, shall for each offence incur a penalty not exceeding 50*l.*

Penalty on unqualified person acting as pilot.

362. An unqualified pilot may, within any pilotage district, without subjecting himself or his employer to any penalty, take charge of a ship as pilot under the following circumstances; (that is to say,)

Occasions on which unlicensed persons may act as pilots.

When no qualified pilot has offered to take charge of such ship, or made a signal for that purpose; or

When a ship is in distress or under circumstances making it necessary for the master to avail himself of the best assistance which can be found at the time; or

For the purpose of changing the moorings of any ship in port, or of taking her into or out of any dock, in cases where such act can be done by an unqualified pilot without infringing the regulations of the port or any orders which the harbour-master is legally empowered to give.

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The voyage must be finished, but it is sometimes difficult to determine when it has actually come to a termination. In an old case, a ship not quite cleared of her cargo, and having a custom house officer on board, was steered by the mate from Horsleydown New Stairs to Cherry Gardens, and thence to Fountain Stairs. It was held that the mate was not liable to the penalty, because otherwise the position of the ship could not be changed without the expense of pilotage (*n*). A ship has not arrived at her place of destination by merely arriving at the port she is bound for (*o*). To claim the benefit of this section, she must have actually been moored. The master must always exercise his judgment to do the best for the ship in critical circumstances (*p*).

Liability for and recovery of pilotage dues.

363. The following persons shall be liable to pay pilotage dues for any ship for which the services of a qualified pilot are obtained; (that is to say,) the owner or master, or such consignees or agents thereof as have paid or made themselves liable to pay any other charge on account of such ship in the port of her arrival or discharge, as to pilotage inwards, and in the port from which she clears out as to pilotage outwards; and in default of payment such pilotage dues may be recovered in the same manner as penalties of the like amount may be recovered by virtue of this Act; but such recovery shall not take place until a previous demand thereof has been made in writing, and the dues so demanded have remained unpaid for seven days after the time of such demand being made.

Power for consignees to retain pilotage dues paid by them.

364. Every consignee and agent (not being the owner or master) hereby made liable for the payment of pilotage dues in respect of any ship may, out of any monies in his hands received on account of such ship or belonging to the owner thereof, retain the amount of all dues so paid by him together with any reasonable expenses he may have incurred by reason of such payment or liability.

Offences of Pilots (General).

Penalties on qualified pilot:

exercising certain trades;

365. If any qualified pilot commits any of the following offences; (that is to say,)

(1.) Keeps himself, or is interested in keeping by any agent, servant, or other person, any public house or place of

(*n*) *R.* v. *Lambe*, 5 T. R. 76. See also *R.* v. *Neale*, 8 T. R. 241; Maclachlan on Shipping (2nd ed.), 262.

(*o*) *Attwood* v. *Case*, 1 Q. B. D. 134.

(*p*) Kay on Shipmasters, &c., II. 774.

public entertainment, or sells or is interested in selling any wine, spirituous liquors, tobacco, or tea;

(2.) Commits any fraud or other offence against the revenues of customs or excise or the laws relating thereto; — offending against revenue;

(3.) Is in any way directly or indirectly concerned in any corrupt practices relating to ships, their tackle, furniture, cargoes, crews, or passengers, or to persons in distress at sea or by shipwreck, or to their monies, goods, or chattels; — guilty of corrupt practices;

(4.) Lends his licence; — lending licence;

(5.) Acts as pilot whilst suspended; — acting when suspended;

(6). Acts as pilot when in a state of intoxication; — acting when drunk;

(7.) Employs or causes to be employed on board any ship of which he has the charge any boat, anchor, cable, or other store, matter, or thing beyond what is necessary for the service of such ship, with the intent to enhance the expenses of pilotage for his own gain or for the gain of any other person; — unnecessarily causing expense;

(8.) Refuses or wilfully delays, when not prevented by illness or other reasonable cause, to take charge of any ship within the limits of his licence upon the signal for a pilot being made by such ship, or upon being required to do so by the master, owner, agent, or consignee thereof, or by any officer of the pilotage authority by whom such pilot is licensed, or by any principal officer of customs; — declining to go off;

It is however established that a pilot is not bound to go on board a vessel in distress and render pilot service for mere pilotage reward. He will be entitled to salvage under such circumstances (see sec. 483, p. 404), and if he is only promised pilotage and refuses, he is liable to no censure (*q*).

(9.) Unnecessarily cuts or slips, or causes to be cut or slipped, any cable belonging to any ship; — unnecessarily cutting or slipping cable;

(10.) Refuses, on the request of the master, to conduct the ship of which he has the charge into any port or place into which he is qualified to conduct the same, except on reasonable ground of danger to the ship; — refusing to conduct ship into port;

(*q*) Maclachlan on Shipping (2nd ed.), 271; *The Frederick*, 1 W. Rob. 16; *The Hebe*, 2 W. Rob. 246; *The Jonge Andries*, Swa. 226, 303.

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quitting ship.

(11.) Quits the ship of which he has the charge, without the consent of the master, before the service for which he was hired has been performed;

He shall for each such offence, in addition to any liability for damages at the suit of the person aggrieved, incur a penalty not exceeding 100*l.*, and be liable to suspension or dismissal by the pilotage authority by whom he is licensed; and every person who procures, abets, or connives at the commission of any such offence shall likewise, in addition to any such liability for damages as aforesaid, incur a penalty not exceeding 100*l.*, and if a qualified pilot, shall be liable to suspension or dismissal by the pilotage authority by whom he is licensed.

Trinity House pilots are only liable for neglect or want of skill to the amount of £100 (see secs. 372, 373, p. 330). The law of this country is more merciful than some of the ancient maritime ordinances, for by their provisions if damage ensued through default of the pilot, he was obliged to make full satisfaction or to lose his head (*r*).

Penalty on pilot endangering ship, life, or limb.

366. If any pilot, when in charge of any ship, by wilful breach of duty or by neglect of duty, or by reason of drunkenness, does any act tending to the immediate loss, destruction, or serious damage of such ship, or tending immediately to endanger the life or limb of any person on board such ship; or if any pilot, by wilful breach of duty or by neglect of duty, or by reason of drunkenness, refuses or omits to do any lawful act proper and requisite to be done by him for preserving such ship from loss, destruction, or serious damage, or for preserving any person belonging to or on board of such ship from danger to life or limb; the pilot so offending shall for each such offence be deemed guilty of a misdemeanor, and, if a qualified pilot, also be liable to suspension and dismissal by the authority by which he is licensed.

Penalty on pilot in charge of a ship doing her wilful injury.

367. If any person, by wilful misrepresentation of circumstances upon which the safety of a ship may depend, obtains or endeavours to obtain the charge of such ship, such person, and every other person procuring, abetting, or conniving at the commission of such offence, shall, in addition to any liability for damages at the suit of the party aggrieved, incur a penalty

(*r*) Laws of Oleron, Art. XXII. By the Consolato del Mare, sec. 809 (Ed. Boucher), II. 430, if the pilot does not know how to bring the ship into his port, *il doit perdre incontinent la tête sans remission et sans merci.*

not exceeding 100*l.*, and if the offender is a qualified pilot, he shall also be liable to suspension or dismissal by the pilotage authority by which he is licensed.

General Power of Trinity House.

Power of Trinity House to alter regulations.

368. The Trinity House may, in exercise of the general power hereinbefore given to all pilotage authorities of doing certain things in relation to pilotage matters, alter such of the provisions hereinafter contained as are expressed to be subject to alteration by them in the same manner and to the same extent as they might have altered the same if such provisions had been contained in any previous Act of Parliament instead of in this Act.

As to the general powers of pilotage authorities, see sec. 331 *et seq.* p. 303.

Sub-Commissioners and Pilots (Trinity House).

Power of Trinity House to appoint sub-commissioners.

369. The Trinity House shall continue to appoint sub-commissioners, not being more than five nor less than three in number, for the purpose of examining pilots in all districts in which they have been used to make such appointments, and may, with the consent of Her Majesty in Council, but not otherwise, appoint like sub-commissioners for any other district in which no particular provision is made by any Act of Parliament or charter for the appointment of pilots; but no pilotage district already under the authority of any sub-commissioners appointed by the Trinity House shall be extended, except with such consent as aforesaid, and no sub-commissioners so appointed shall be deemed to be pilotage authorities within the meaning of this Act.

Trinity House to license pilots to act within certain limits.

370. The Trinity House shall continue, after due examination by themselves or their sub-commissioners, to appoint and license under their common seal pilots for the purpose of conducting ships within the limits following or any portion of such limits; (that is to say,)

London District.

(1.) "The London District," comprising the waters of the Thames and Medway as high as London Bridge and Rochester Bridge respectively, and also the seas and channels leading thereto or therefrom as far as Orford-

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ness to the north and Dungeness to the south; so, nevertheless, that no pilot shall be hereafter licensed to conduct ships both above and below Gravesend:

English Channel District.

(2.) "The English Channel District," comprising the seas between Dungeness and the Isle of Wight:

Trinity House Outport Districts.

(3.) "The Trinity House Outport Districts," comprising any pilotage district for the appointment of pilots within which no particular provision is made by any Act of Parliament or charter.

Publication of notice of licences of pilots by the Trinity House.

371. Subject to any alteration to be made by the Trinity House, the names of all pilots licensed by the Trinity House shall be published in manner following; (that is to say,)

(1.) The Trinity House shall at their house in London fix up a notice specifying the name and usual place of abode of every pilot so licensed, and the limits within which he is licensed to act:

(2.) The Trinity House shall transmit a copy of such notice to the Commissioners of Customs in London, and to the principal officers of customs resident at all ports within the limits for which such pilot is licensed; and such notice shall be posted up by the Commissioners at the Custom House in London, and by such officers at the custom houses of the ports at which they are respectively resident.

Bonds to be given.

372. Subject to any alteration to be made by the Trinity House, every Trinity House pilot on his appointment shall execute a bond for 100*l.* conditioned for the due observance on his part of the regulations and byelaws of the Trinity House, such bond to be free from stamp duty, and from any other charge except the actual expense for preparing the same.

Liability limited.

373. No qualified pilot who has executed such bond as is hereinbefore mentioned shall be liable for neglect or want of skill beyond its penalty and the amount of pilotage payable to him in respect of the voyage on which he is engaged.

Continuance and renewal of licences.

374. Subject to any alteration to be made by the Trinity House, no licence granted by them shall continue in force beyond the thirty-first day of January next ensuing the date of such licence, but the same may, upon the application of the pilot holding such licence, be renewed on such thirty-first day of January in every year, or any subsequent day, by indorse-

ment under the hand of the secretary of the Trinity House, or such other person as may be appointed by them for that purpose.

This section has been held to mean that the renewal may *operate* from the 31st of January in every year, that is, the effect of the renewal when made, is to be from the 31st of January, or from the subsequent day on which the renewal may be made. The Privy Council considered that when sec. 388, which exempts an owner from liability if pilotage is compulsory, is looked at, it will be seen that it could never have been the intention of the Legislature that the owner's liability should depend upon the date when the pilot's licence was renewed, and upon whether the renewal was before or after the 31st of January of any year (*s*). Besides which the inconvenience of any other construction is quite apparent, and the consequence would be that for a certain period, certainly hours, probably days, and possibly weeks, there would be no qualified pilots within particular parts of the district to which the Act applies (*t*).

375. The Trinity House shall have power to revoke or suspend the licence of any pilot appointed by them, in such manner and at such time as they think fit.

Power to revoke or suspend licences.

As to the offences of pilots for which their licence may be suspended or revoked, see sec. 365, p. 326.

Compulsory Pilotage (Trinity House).

376. Subject to any alteration to be made by the Trinity House, and to the exemptions hereinafter contained, the pilotage districts of the Trinity House within which the employment of pilots is compulsory are the London district, and the Trinity House outport districts, as hereinbefore defined; and the master of every ship navigating within any part of such district or districts, who, after a qualified pilot has offered to take charge of such ship, or has made a signal for that purpose, either himself pilots such ship without possessing a certificate enabling him so to do, or employs or continues to employ an unqualified person to pilot her, shall for every such offence, in addition to the penalty hereinbefore specified, if the Trinity House certify in writing under their common seal that the prosecutor is to be at liberty to proceed for the recovery of such additional penalty, incur an additional penalty not exceeding 5*l.* for every fifty tons burden of such ship.

Penalty on masters of ships employing unlicenced pilots, or acting as pilot.

(*s*) *The Beta*, 3 Moo. P. C. N. S. 23.
(*t*) *The Beta*, 3 Moo. P. C. N. S. 30.

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When pilotage is compulsory, the owner or master is not answerable for any damage occasioned by the fault or incapacity of any qualified pilot (see sec. 388, p. 345). But the master and crew must not neglect their own duties while the pilot is on board (see sec. 330, p. 301). The master will not be subject to the penalty if he cannot procure a qualified pilot (see sec. 362, p. 325). The penalty for employing an unqualified pilot when pilotage is compulsory is double the amount of pilotage demandable for the conduct of such ship (see sec. 353, p. 320).

Trinity House to make regulations for a constant supply of qualified pilots at Dungeness.

377. Subject to any alteration to be made by the Trinity House, a sufficient number of qualified pilots shall always be ready to take charge of ships coming from the westward past Dungeness; and the Trinity House shall, by byelaw to be made in the same manner as other byelaws made under the powers herein contained, make such regulations with respect to the pilots under their control as may be necessary in order to provide for an unintermitted supply of qualified pilots for such ships, and to insure their constant attendance upon and due performance of their duty both by night and day, whether by cruizing between the South Foreland and Dungeness, or by going off from shore upon signals made for the purpose, or by both of such means, or by any other means, and whether in rotation or otherwise, as the Trinity House think fit.

Ship coming past Dungeness not having pilot on board to take the first qualified pilot who offers.

378. Subject to any alteration to be made by the Trinity House, every master of any ship coming from the westward, and bound to any place in the rivers Thames and Medway (unless she has a qualified pilot on board or is exempted from compulsory pilotage), shall, on the arrival of such ship off Dungeness, and thenceforth until she has passed the South Buoy of the Brake, or a line to be drawn from Sandown Castle to the said buoy, or until a qualified pilot has come on board, display and keep flying the usual signal for a pilot; and if any qualified pilot is within hail, or is approaching and within half a mile, and has the proper distinguishing flag flying in his boat, such master shall, by heaving-to in proper time or shortening sail, or by any practicable means consistent with the safety of his ship, facilitate such pilot getting on board, and shall give the charge of piloting his ship to such pilot; or if there are two or more of such pilots offering at the same time, to such one of them as may, according to the regulations for the time being in force, be entitled or required to take such charge; and if any such master fails to display or keep flying

the usual signal for a pilot in manner hereinbefore required, or to facilitate any such qualified pilot as aforesaid getting on board as hereinbefore required, or to give the charge of piloting his ship to such pilot as hereinbefore mentioned in that behalf, he shall incur a penalty not exceeding double the sum which might have been demanded for the pilotage of his ship, such penalty to be paid to the Trinity House, and to be carried to the account of the Trinity House Pilot Fund.

Penalty on masters failing to display usual signal for pilot.

The signals to be used for pilots are prescribed by 36 & 37 Vic. c. 85, s. 19 (see sec. 330, p. 302).

Exemptions from Compulsory Pilotage (Trinity House).

379. The following ships when not carrying passengers shall be exempted from compulsory pilotage in the London district and in the Trinity House outport districts; (that is to say,)

Exemptions from compulsory pilotage.

Passengers.—The term "passenger" is not defined in the principal Act, except in sec. 303, where the definition is given only for a specified purpose, viz., for the purposes of the provisions in the Act with respect to surveys of *steam* ships. As so defined, the term includes any person carried in a steam ship, other than the master and crew, the owner, his family and servants. The payment of a fare is necessary to constitute a person a passenger (*u*). A person to whom the master had agreed to give a free passage, and who messed with him, and also assisted in working the ship, was held to be a nondescript, and not a passenger (*x*). Two persons whom the master had taken as visitors, but who subsequently paid fares, were held not to be passengers (*y*). In the Passengers Act, 1855, sec. 3 (see p. 473), "The expression Passengers shall include all passengers except cabin passengers," and no more precise definition is given.

Who are passengers.

Payment of a fare necessary.

(1.) Ships employed in the coasting trade of the United Kingdom:

Coasting traders.

Coasting vessels are exempt because from their frequent ingress and egress to a particular port, their masters are presumed to be perfectly acquainted with the locality (*z*). A vessel ordinarily employed in foreign trade, going from Liverpool to London, in order to sail from London under an advertisement for a foreign voyage, whether she is in ballast

(*u*) *The Lion*, L. R. 2 A. & E. 102; 21 L. T. N. S. (P. C.) 41.
(*x*) *The Hannah*, L. R. 1 A. & E. 292.
(*y*) *The Lion*, L. R. 2 A. & E. 102; 21 L. T. N. S. (P. C.) 41; 3 Mar. Law Cas. (P. C.) 266.
(*z*) *The Agricola*, 2 W. Rob. 10.

§ 379. or has a cargo on board, is not "a ship employed in the coasting trade" (*a*).

Ships of less than 60 tons burden.

(2.) Ships of not more than sixty tons burden :

Such ships are included under the general exemptions from compulsory pilotage by 6 Geo. IV. c. 125, s. 59, and if they are foreign vessels by 4 Geo. IV. c. 77, s. 5 (see under sec. 353, p. 321).

Ships trading to Boulogne, &c.

(3.) Ships trading to Boulogne, or to any place in Europe north of Boulogne :

(See Order in Council, 21st December, 1871, p. 336, extending this limit to Brest). This extends to vessels *coming from* Boulogne or any place north of it (*b*), and such ships are exempt even though carrying passengers (*c*).

Ships from Guernsey, &c. with stone.

(4.) Ships from Guernsey, Jersey, Alderney, Sark, or Man, which are wholly laden with stone, being the produce of those islands :

These are included in the general exemptions under 6 Geo. IV. c. 125, s. 59 (see sec. 353. p. 320).

Ships in their own port.

(5.) Ships navigating within the limits of the port to which they belong :

"Navigating within."

The words "navigating within" have been held to mean "being within," hence ships belonging to the port of London are exempt when they are within the limits of that port (*d*). The extent of a port may vary for different purposes, and at different periods ; and after a lapse of many years, may become a question of fact. At present for pilotage purposes a certain pillar at Gravesend is considered the limit of the port of London (*e*). Therefore, by this section, all vessels belonging to the port of London are exempt from compulsory pilotage for the whole course of the Thames down to Gravesend. On these grounds a ship belonging to the port of London, going from Dungeness to Gravesend with a qualified pilot on board, was held not liable for running down another vessel before arriving at Gravesend, because the pilotage as far as Gravesend was compulsory, and the collision was owing to the pilot's fault (*f*).

Extent of port of London.

(*a*) *The Lloyd's*, or *Sea Queen*, Lush. 197 ; 1 Mar. Law Cas. 391 ; *The Agricola*, 2 W. Rob. 10.

(*b*) *The Wesley*, Lush. 268.

(*c*) *The Moselle*, 2 Asp. Mar. Law Cas. 586 (see 6 Geo. IV. c. 125, s. 59, under sec. 353, p. 320).

(*d*) *The Stettin*, Br. & L. (P. C.) 200 ; 1 Mar. Law Cas. 229.

(*e*) Trinity House rules, r. 15.

(*f*) *General Steam Navigation Co.* v. *British Colonial Navigation Co.*, L. R. 4 Ex. 238 ; 3 Mar. Law Cas. (Exch.) 237.

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(6.) Ships passing through the limits of any pilotage district on their voyages between two places both situate out of such limits, and not being bound to any place within such limits, nor anchoring therein :

Ships passing through a pilotage district.

This exemption has now been made applicable to all ships by 25 & 26 Vic. c. 63, s. 41 (see under sec. 353, p. 321).

Ships with Passengers.

Ships exempted with or without passengers in certain cases.

By Order in Council, dated 10th July, 1857, "All ships mentioned in the 379th section of the Merchant Shipping Act, 1854, shall be exempted from compulsory pilotage in the London district, and in the Trinity House outport district, as well when carrying passengers as when not carrying passengers, provided, as regards any such ship when carrying passengers, the master or his mate have a pilotage certificate in force for the time being, enabling such master or mate to pilot such ship within such district or districts, granted under the provisions either of the 340th or of the 355th section of the said Act."

Other Exemptions (Trinity House).

Ships navigating in ballast exempt in certain cases.

By Order in Council, 21st November, 1855, "All ships which shall arrive from foreign parts or ports, or places in the United Kingdom, within the pilotage jurisdiction of the Trinity House, shall, when navigating from thence in ballast to a port or place in the United Kingdom, for the purpose of taking on board cargo for delivery at some other port or place in the United Kingdom, be exempt from compulsory pilotage while navigating within the limits of such pilotage jurisdiction, subject nevertheless to the terms and conditions following ; (that is to say,)

Certificate of exemption necessary.

"First. That the owner or master of the ship claiming exemption from such compulsory pilotage, shall provide himself with a certificate of such exemption for the particular voyage therein specified, such certificate to be signed by the secretary or other proper officer of the Trinity House, and to be delivered to the owner or master of such ship, upon his making a declaration, setting forth that the said ship last arrived from foreign parts, and is about to navigate in ballast to some port or place in the United Kingdom, for the purpose of taking on board cargo, for delivery at another port or place also in the United Kingdom, and such port or places being named in such declaration. And further, that the master of such ship shall produce the said certificate to any duly licensed Trinity House pilot who shall offer his services to pilot such ship on such voyage ; and such master shall, on every such occasion, make an entry on the ship's log of the offer by a Trinity House pilot, of the certificate of exemption having been produced to the said pilot, and of his services having been declined.

Certificate to be produced to pilot.

Penalty for misrepresentation.

"Second. That in every case in which a certificate of exemption shall have been obtained by misrepresentation, the person on whose application such certificate shall have been granted, shall forfeit double the amount of the pilotage to which the ship so exempted would, but for such certificate, have been liable, to be recovered in like manner as penalties are recovered under the principal Act ; and,

"Thirdly. That in every case in which a ship for which a certificate of exemption has been granted, shall proceed over sea either before or after

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Pilotage to be paid in a certain case.

arriving at the port or place specified in such certificate, without navigating with cargo to some other port or place in the United Kingdom, the pilotage to which such ship would have been liable had a pilot been employed, shall be paid to the pilotage authority or sub-commissioners of the district, and be applied to the purposes of the Pilotage Fund."

Ships in Ballast.

By Order in Council, 25th July, 1861 (*g*), All ships navigating in ballast from any port or place in the United Kingdom, to any other port or place in the United Kingdom, shall, *when not carrying passengers*, be exempt from compulsory pilotage, within the pilotage jurisdiction of the said Trinity House.

Whether this Order annuls the preceding one or not, I have not been able to ascertain.

Extension of Exemption.

Extension to Brest.

By Order in Council, 21st December, 1871 (*h*), All ships trading from any port or place in Great Britain within the London district, or any of the Trinity House outport districts, to the port of Brest in France, or any port or place in Europe, north and east of Brest, or to the islands of Guernsey, Jersey, Alderney, Sark, or Man, or from Brest or any port or place in Europe north and east of Brest, or from the islands of Guernsey, Jersey, Alderney, Sark, or Man, to any port or place in Great Britain within either of the said districts, when not carrying passengers, shall be exempted from compulsory pilotage within such districts.

But the general exemptions (see sec. 353, p. 320), apply to the Trinity House district, and it has been decided that a ship coming from a port north of Boulogne, *and carrying* passengers, is not bound to employ a qualified pilot (*i*).

Rates of Pilotage (Trinity House).

Rates of pilotage.

380. Subject to any alteration to be made by the Trinity House, there shall continue to be paid to all Trinity House pilots, in respect of their pilotage services, such dues as are immediately before the time when this Act comes into operation payable to them in respect of such services.

Payment of pilotage dues from foreign ships trading to and from the port of London.

381. Subject to any alteration to be made by the Trinity House, and notwithstanding anything hereinbefore contained, there shall be paid in respect of all foreign ships trading to and from the port of London, and not exempted from pilotage, the following pilotage dues; that is to say, as to ships inwards, the full amount of dues for the distance piloted, and as to ships outwards, the full amount of dues for the distance required by law; and payment of such pilotage dues shall be made to the

(*g*) *London Gazette*, 26th July, 1861.
(*h*) *London Gazette*, 22nd Dec. 1871.
(*i*) *The Earl of Auckland*, Lush. 164.

Collector of Customs in the port of London by some one or more of the following persons, that is to say, the master or other person having the charge of such ship, or the consignees or agents thereof who have paid or made themselves liable to pay any other charge for such ship in the said port of London; and such pilotage may be recovered in the same manner as other pilotage dues are hereinbefore declared to be recoverable.

Certificate of payment of pilotage to be given.

382. Subject to any alteration to be made by the Trinity House, the said Collector of Customs shall, on receiving any pilotage dues in respect of foreign ships, give to the person paying the same a receipt in writing; and no officer of customs in the port of London shall grant a clearance or transire for any such foreign ship as aforesaid without the production of such receipt; and if any such ship attempts to go to sea without such clearance or transire, any such officer may detain her until the said receipt is produced.

Application of such moneys by Trinity House.

383. Subject to any alteration to be made by the Trinity House, the said collector shall pay over to the Trinity House the pilotage dues received by him in respect of any foreign ship; and the Trinity House shall apply the same in manner following:

In the first place, in paying to any pilot who may bring sufficient proof of his having had the charge of such ship such dues as would have been payable to him for such pilotage service if the ship had been a British ship, after deducting therefrom the poundage due to the Trinity House:

In the second place, in paying to any unlicensed person who may bring sufficient proof of his having, in the absence of a licensed pilot, had the charge of such ship, such amount as the Trinity House may think proper, not exceeding the amount which would under similar circumstances have been payable to a licensed pilot, after deducting poundage:

And lastly, shall pay over to the Trinity House Pilot Fund the residue, together with all poundage deducted as aforesaid:

Settlement of difference as to draught of ship.

384. Whenever any difference arises between the master and the qualified pilot of any ship trading to or from the port of London as to her draught of water, the Trinity House shall upon application by either party, made, in case of a ship in-

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ward-bound, within twelve hours after her arrival, or at some time before she begins to discharge her cargo, and in the case of a ship outward bound before she quits her moorings, appoint some proper officer who shall measure the ship, and settle the difference accordingly: and there shall be paid to the officer measuring such ship, by the party against whom he decides, the following sums; (that is to say,) one guinea if the ship be below, and half a guinea if the ship be above the entrance of the London docks at Wapping.

The draught of water must now be marked on all ships (see under sec. 291, p. 252).

Pilot Fund (Trinity House).

Payments to be made to the pilot fund.

385. Subject to any alteration to be made by the Trinity House, there shall continue to be paid to them, and carried over to the Trinity House Pilot Fund, the sums of money following; (that is to say,)

(1.) A poundage of sixpence in the pound upon the pilotage earnings of all pilots licensed by the Trinity House:

(2.) A sum of three pounds three shillings to be paid on the first day of January in every year by every person licensed by the Trinity House to act as pilot in any district not under the superintendence of sub-commissioners, or in any part of such district:

And any qualified pilot giving a false account of his earnings, or making default in payment of any sum due from him under this section, shall forfeit double the amount payable, and shall further be liable, at the discretion of the Trinity House, to suspension or dismissal.

Application of fund.

386. Subject to any prior charges that may be subsisting thereon by virtue of any Act or Acts of Parliament or otherwise, the said Trinity House Pilot Fund shall be chargeable in the first instance with such expenses as the Trinity House may duly incur in performance of their duties in respect of pilots and pilotage, and after payment thereof shall, subject to any alteration to be made by the Trinity House, be administered by the Trinity House for the benefit of such pilots licensed by them after the first day of October one thousand eight hundred and fifty-three as are incapacitated for the performance of their duty by reason of age, infirmity, or accident, or of the widows

and children of pilots so licensed, or of such incapacitated pilots only. § 386.

Trinity House Rules.

The following bye-laws, rules, orders, regulations, and ordinances have been issued by the Trinity House :—

I. Merely repeals certain previous bye-laws, &c.

To serve Her Majesty when required.

II. It is ordained, that every pilot who shall be ordered to proceed on Her Majesty's service by any order signed by the deputy-master or secretary of the said corporation, or by the officer for the time being of the said corporation at Yarmouth, or elsewhere, duly authorised to act in matters of pilotage, or who shall be so ordered, in writing or otherwise, by any officer in Her Majesty's service, shall immediately proceed thereon; and every pilot who shall fail so to do, or who shall evade the receipt of any such order, or who shall quit or decline such service, shall, for the first offence, forfeit 5*l*., and for the second and every subsequent offence 10*l*. each.

Duty in transport service.

III. It is ordained, that every pilot engaged in the charge of any ship employed by Government in the transport service, shall observe particularly if any unnecessary delay takes place on the part of the master in proceeding towards his destination; and if any delay does take place, such pilot shall on his return report the same to the secretary of the said corporation, and upon going on board such pilot shall give notice to the master that he has orders so to do.

Place of mooring.

IV. It is ordained, that no pilot having the charge of a merchant ship shall stop the same alongside the moorings of Her Majesty's ships at Deptford, or elsewhere, or between the Round Tree and Bathing House at Gravesend (except in either of such cases there may be an extreme necessity for so doing, or leave be obtained for that purpose from the proper officer or officers in that behalf), and all pilots licensed by the said corporation are at all times to be particularly careful to steer clear of the Queen's ships in passing them.

Previous engagement to be made known.

V. It is ordained, that every pilot, when called upon or required to pilot any ship or vessel, shall, if under engagement to any other ship, forthwith make known such engagement, and specify the particulars thereof truly and faithfully to the person calling for or requiring such pilot's service; and in case of any concealment, misrepresentation, or falsehood in respect of such alleged previous engagement, the pilot offending shall forfeit 10*l*.

Pilot to stay on board during detention.

VI. It is ordained, that every pilot who shall have taken charge of any ship from the river Thames to the Downs, or elsewhere, shall, without any additional compensation in that behalf, wait on board for the space of three complete days, while such ship may be detained at Gravesend, or elsewhere, for want of seamen, or by any other casualty, nor shall he at the end of three complete days be at liberty to quit such ship, or receive any additional compensation if she shall be further detained by winds, weather, or tides; and should the ship be detained beyond three complete days on any other account except winds, weather, or tides, the pilot having the charge thereof shall nevertheless still (if required so to do), remain in the charge of her, provided a compensation of 6*s*. per day be offered to him in that behalf by the master or owner.

Respect to Her Majesty's officers.

VII. It is ordained, that every pilot shall in all cases demean himself civilly and respectfully towards all persons who may require his service,

§ 386. and towards all officers in Her Majesty's Navy, and shall maintain a strict temperance and sobriety in the exercise of his office, and shall use his utmost care and diligence for the safe conduct of every ship which he shall be entrusted with the charge of, and to prevent her doing damage to others.

Notice of undertaking charge of ship downwards.

VIII. It is ordained, that every pilot who shall undertake the charge of any ship downwards, shall, before his departure, leave, or cause to be left, notice thereof in writing at the proper office at the Trinity House in London, with one of the clerks there attending, and shall be considered as disengaged until he shall have so done; and upon such pilot's return he shall immediately, in his own person, attend at the said office, and make and sign such entry in a book there kept for that purpose, as the said corporation shall from time to time direct or require.

Pilots to attend courts, &c., of corporation.

IX. It is ordained, that every pilot licensed by the said corporation, shall from time to time, and at all times in obedience to the order or summons of the said corporation, under the hand of the secretary thereof for the time being, duly delivered or offered to such pilot, or left a reasonable time at the usual or last known place of residence of such pilot, attend the said corporation, at their courts, bye-boards, or committees, or their secretary for the time being, at the Trinity House in London, and that every pilot licensed by the said corporation upon a certificate of qualification from sub-commissioners of pilotage, shall in like manner attend the sub-commissioners of the port or place for which such pilot shall be so licensed, in obedience to the order or summons of the said sub-commissioners, under their hands, or the hands of the major part of them, duly delivered, offered, or left as aforesaid, to answer to any charges brought against such pilots, respectively, or for the performance of any public service, or for any other purpose whatsoever; and in default of such attendance every pilot so offending shall forfeit, for the first offence, 40*s.*, and for the second and every subsequent offence, 5*l.* each.

Fee for certificate of examination.

X. It is ordered and hereby directed, that every pilot licensed or to be licensed by the said corporation, upon their receiving a certificate of examination by any sub-commissioners of pilotage, shall for such examination, and for the granting of the licence thereon, pay the sum of two guineas to the said sub-commissioners of pilotage by whom he shall be so examined, or to one of them, and shall also, for the renewing or confirming such licence, from time to time pay to the sub-commissioners of pilotage for the time being at or for the port or place specified in such licence, or to one of them, the annual sums following (that is to say):—Every pilot so licensed, or to be licensed as aforesaid, for the ports of Plymouth, Portsmouth, or Cowes respectively, the annual sum of two guineas. And every pilot licensed or to be licensed as aforesaid, for any other port or place, the annual sum of one guinea, unless the pilots at or for such port or place shall be divided into two classes, and in that case the pilots of the first class are to pay the annual sum of two guineas each, and pilots not of the first class the annual sum of one guinea each.

Licence not to be altered.

XI. It is ordained, that no pilot shall add to or in any way alter his licence, or make or alter any indorsement thereon, nor shall he be privy to any such licence or endorsement being altered.

Notice of change in sands and channels.

XII. It is ordained, that every pilot who shall observe any alteration in any of the sands or channels, or that any of the buoys or beacons of the said corporation are driven away, broken down, or out of place, shall forthwith deliver or send a correct statement thereof in writing to the secretary of the said corporation for the time being.

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XIII. It is ordained, that every pilot shall, whenever he comes to an anchor, carefully observe the settings of the tide and the force of the stream, and if it shall happen that he comes near to a sand, or other object or cause of danger, and there be any other ships or ship in company likely to fall in therewith, such pilot shall immediately give notice thereof to the captain or principal officer of the ship under his care, that he may make a signal to such other ships or ship for avoiding the same. Tide to be observed.

XIV. It is ordained, that no pilot shall on any pretence aid or assist, either in his own person, or with his boat, or servants, or by any other means whatever, the landing, removing, or secreting any seaman from any merchant ship or vessel, to avoid serving in Her Majesty's Navy, or to escape the impress of the same. Not to assist escape of seamen.

XV. It is ordained, that every pilot shall from time to time conform himself strictly to all directions which shall be given to him by any of the harbour masters authorised by Act of Parliament under the corporation of the City of London, touching the mooring, unmooring, placing, or removing of any ship or vessel under his charge, as long as such ship or vessel shall be lying and situate within the limits of the authority of such harbour master. To obey orders of harbour masters.

XVI. It is ordained, that each and every pilot belonging to a licensed pilot vessel shall be at liberty to entertain one apprentice and no more. Apprentices.

XVII. It is ordained, that for any work done on the river Thames or Medway, by men in boats, being less than the work for the whole tide, the pay shall be for half a tide's work, 4*s.* to each man, and so on in proportion for any time less than a whole tide, the pay for which is settled by the Act of the sixth year of the reign of His Majesty King George IV. at 8*s.* Men in boats.

XVIII. It is ordained, that in all cases where pecuniary penalties and forfeitures are annexed to the breach of the foregoing bye-laws, rules, orders, regulations, and ordinances, the said Corporation of Trinity House may mitigate and reduce the same to one-fourth part at their discretion. Mitigation of penalties.

XIX. It is ordained, that every pilot who shall offend against any or either of the foregoing bye-laws, rules, orders, regulations, and ordinances, shall, for every such offence (whether the same shall subject him to any pecuniary penalty or not, and in addition to such penalty, if any) be liable to have his licence annulled and forfeited, or suspended, at the discretion of the said corporation. Annulling of licences.

Cinque Ports Pilots.

The geographical boundaries of the Cinque Ports are defined by 1 & 2 Geo. 4, c. 76, s. 18. (See s. 460, p. 386.)

16 & 17 Vict. c. 129, s. 3 (The Pilotage Law Amendment Act, 1853).—All Cinque Port pilots duly licensed and authorised before this Act comes into operation to pilot any vessels from Dungeness or the Downs up the rivers Thames or Medway shall be authorised to pilot the like vessels within the same limits and in the same manner within and in which they might have lawfully piloted the same before the passing of this Act according to the terms of their existing licenses, and shall also by virtue of such existing licenses (without any Present Cinque Port pilots to be competent to pilot vessels, to either inwards or outwards, within the limits for

§ 386. which they are now licensed.

license from the Trinity House in that behalf) be authorised to pilot the like vessels down the said rivers Thames and Medway, or from those rivers to the Downs or Dungeness, or from the west end of the Owers to the south buoy of the Brake, within the limits within which such existing licenses authorise them to act in piloting such vessels from the Downs to the said rivers, and up the same, or from the south buoy of the Brake to the west end of the Owers; and it shall be lawful for the Trinity House by a supplemental license to authorise any such Cinque Port pilot to pilot any vessels in any parts of the rivers Thames and Medway, or in any of the seas or channels leading to or from such rivers to which his existing license may not extend, after examination in respect of the further limits within which he is to be so licensed to act, and upon the payment of such fee, if any, as the said Trinity House may, with the consent of the Board of Trade, appoint for the purpose; and such supplemental license shall be taken to be part of and to be held upon the same conditions and subject to the same regulations in all respects as such existing license.

But s. 4 of the same Act (16 & 17 Vict. c. 129) Cinque Port pilots are subject to the fifth part of the "Merchant Shipping Act, 1854," and to all the bye-laws, rules and orders of the Trinity House.

Present Trinity House pilots may pilot ships inwards within the limits of their licenses.

16 & 17 Vict. c. 129, s. 5.—All pilots licensed before this Act comes into operation by the said Trinity House to pilot any vessels upon the rivers Thames and Medway, or from London Bridge to the Downs, or from the Isle of Wight to London Bridge, shall be authorised to pilot the like vessels from or by Dungeness up the rivers Thames and Medway, and from the south buoy of the Brake to the westward to the end of the Owers, or within such or so much of the same limits as under their present licenses they might act within in piloting such vessels down the said rivers or outwards or to the westward: Provided always, that nothing herein contained shall be deemed to confer any privilege of piloting above Gravesend and Stangate Creek respectively upon any pilots by whatever authority they may be licensed, except with the concurrence of the Trinity House in the case of each pilot.

Section 8 of this Act gives power to the Trinity House to fix the rates to be paid to such pilots (see s. 380, p. 336). Section 10 transfers the property of the Court of Loadmanage and the Society of the Cinque Ports to the Trinity House. Sections 11, 12, and 13 enable the Trinity House to dispose of this property for the benefit of existing interests of Cinque Port pilots.

Alteration of payments made to

35 & 36 Vict. c. 73, s. 10.—Whereas in pursuance of the Pilotage Law Amendment Act, 1853, the several funds then

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Trinity House Pilotage Fund by Cinque Port pilots.

belonging to the Cinque Ports pilots were merged into the common fund called the Trinity House Pilotage Fund, and by the same Act power was given to the Trinity House of Deptford Strond, with the approval of the Board of Trade, from time to time to make regulations for altering and determining the payments and contributions to be made to the said pilotage fund by Cinque Ports pilots licensed before the said Act came into operation: And whereas by one of the regulations made under the authority of the said Act it was provided that each of the said Cinque Ports pilots should pay towards the said fund eleven shillings for each turn: And whereas it has proved that the turns have been more numerous than was expected, and that the sums paid to the Trinity House, and carried to the credit of the said fund, in respect of the said turns, have been larger than was assumed in making the calculations upon which the said regulation was based: And whereas it is expedient that in lieu of the said sum of eleven shillings per turn the fixed annual sum of thirteen pounds four shillings should for the future be paid by or in respect of each of the said pilots so long as he remains unsuperannuated, and that the excess of the sum heretofore paid in each year by each pilot over the sum of thirteen pounds four shillings should be returned: And whereas doubts have been entertained whether the purposes aforesaid can be effected without the authority of Parliament: Be it enacted, that the Trinity House of Deptford Strond shall, out of the Trinity House Pilotage Fund, repay to each of the Cinque Ports pilots licensed before the Pilotage Law Amendment Act, 1853, came into operation, or if he be deceased, to his executors or administrators, the aggregate sum by which the sum of eleven shillings per turn heretofore paid by him exceeds the sum which he would have paid if he had paid thirteen pounds four shillings per annum; and that each of the said pilots shall, while he continues to act as a pilot, pay to the said Trinity House the sum of eleven shillings per turn as heretofore, from the first day of January in each year, until the sums contributed in the same year amount to an aggregate sum equal to the product of thirteen pounds four shillings multiplied by the number of pilots licensed as above who are then surviving and unsuperannuated, and that when such aggregate sum is made up no further contributions shall be required from the said pilots until after the thirty-first day of December in the same year; and if the said contributions during any one year fall short of the said aggregate sum, the said pilots then surviving and unsuperannuated shall, at such time and in such manner as the Trinity House may direct, make good such deficiency by payment of an additional contribution per man, to be calculated pro ratâ upon the number of turns which each may have carried during the said year, and any such pilot failing to pay such additional contribution

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shall, in default of such payment, become liable to immediate removal from active service and superannuation upon such proportion of the full pension payable to such pilot as the Trinity House may see fit.

Arrangement of pilot funds for Bristol Channel pilots.

25 & 26 Vict. c. 63, s. 42.—Whereas under the provisions of the Bristol Channel Pilotage Act, 1861, pilotage authorities have been established at the ports of Newport and Gloucester, and the pilots theretofore licensed by the Trinity House of Deptford Strond for those parts have ceased to be so licensed: And whereas no provision has been made by the said Act for dealing with such interests as the said pilots may have in the Trinity House pilot fund mentioned in the Principal Act: Be it therefore enacted, that, notwithstanding the said pilots have ceased to be licensed by the Trinity House, the Trinity House may make such an equitable arrangement in the administration of the Trinity House Pilot Fund mentioned in the Principal Act with reference to the interests of the pilots so ceasing to be licensed by them as aforesaid as they may in their discretion think fit.

Appointment of Sub-Commissioners by Trinity Houses of Hull and Newcastle.

Power to Trinity Houses of Hull and Newcastle to appoint sub-commissioners.

387. The two Corporations of the Trinity Houses of the ports of Hull and Newcastle shall continue to appoint sub-commissioners, not being more than seven nor less than three in number, for the purpose of examining pilots in all districts in which they have been used to make such appointments, and may, with the consent of Her Majesty in Council, but not otherwise, appoint like sub-commissioners for any other district situate within their respective jurisdictions; but no pilotage district already under the authority of any sub-commissioners appointed by either of the said corporations shall be extended, except with such consent as aforesaid; and no sub-commissioners appointed or to be appointed by the Trinity Houses of Hull and Newcastle shall be deemed to be pilotage authorities within the meaning of this Act, nor shall anything in this Act contained be held to confer upon the commissioners for regulating the pilotage of the port of Kingston-upon-Hull and of the River Humber any jurisdiction of a different nature or character from that which they have heretofore exercised.

Saving of Owner's and Master's Rights. **§ 388.**

388. No owner or master of any ship shall be answerable to any person whatever for any loss or damage occasioned by the fault or incapacity of any qualified pilot acting in charge of such ship, within any district where the employment of such pilot is compulsory by law.

Limitation of liability of owner where pilotage is compulsory.

Strict construction.

This section, as it takes away a remedy from persons who have received an injury, must be construed strictly. The pilot must be "acting in charge of such ship," and no other fault committed by the pilot, whatever it may be, can in any degree be comprehended in the terms of the statute (*k*). In order to claim immunity for damage, it is not sufficient to state that a pilot was on board and in charge of the ship; it must be shown clearly that the damage was occasioned by some erroneous conduct on the part of the pilot within the limits where pilotage is compulsory, and solely from that cause (*l*); for if the accident result from the joint misconduct of the pilot and crew, or from some defect of the ship, the owner's liability remains (*m*). This rule is carried out very strictly. In a case before the Privy Council, in which it was proved that every act of omission which contributed to the accident, was an act for which the pilot was to blame; yet, inasmuch as for one of them, viz., the omission to strike and haul down certain yards and masts, the master was held to be also in fault, the owners were not exonerated from liability (*n*). But on the other hand, if it is proved that the pilot was in fault, and there is not sufficient proof that the master and crew were also in fault in any particular which contributed, or may have contributed, to the accident, the owners will then have released themselves from the burden of proof which the law casts upon them (*o*). The only person liable when pilotage is compulsory, and a duly qualified pilot is employed, is the pilot himself (*p*). The liability of Trinity House pilots for negligence or incapacity is restricted to 100*l.*, and the pilotage dues of the particular voyage on which the accident happens (see ss. 372, 373, p. 330). If a collision occurs abroad, within the jurisdiction of some foreign country, and while the ship doing the damage is in the compulsory charge of a pilot, such ship cannot be sued in England, even though she is liable for the damage by the laws of that foreign country (*q*).

Contributory negligence.

Compulsory pilotage abroad.

(*k*) *The General de Caen*, Swa. 10; *Clyde Navigation Co.* v. *Barclay*, Scotch Cases, 4th Series, II. 842, affirmed in House of Lords, W. N. 24th, June, 1876, p. 199.

(*l*) *Pollock* v. *M'Alpin*, 7 Moo. P. C. 427; *The Lion*, L. R. 2 A. & E. 102; *The Admiral Boxer*, Swa. 195.

(*m*) *The Diana*, 1 W. Rob. 135; *The Schwalbe*, 14 Moo. P. C. 250; *The Iona*, L. R. 1 P. C. 432; 16 L. T. N. S. 158; *The Royal Charter*, L. R. 2 A. & E. 362.

(*n*) *The Christiana*, 7 Moo. P. C. 160.

(*o*) *The George*, 4 No. of Cas. 161; *The Atlas*, 5 No. of Cas. 50; *The Velasquez*, 4 Moo. P. C. N. S. 426.

(*p*) *The Annapolis*, Lush. 295.

(*q*) *The Halley*, L. R. 2 P. C. 193.

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PART VI.

LIGHTHOUSES.

Management of Lighthouses.

Management of lighthouses, buoys, and beacons to be in Trinity House, Commissioners of Northern Lighthouses, and Commissioners of Irish Lights.

389. Subject to the provisions hereinafter contained, and subject also to any powers or rights now lawfully enjoyed or exercised by any person or body of persons having by law or usage authority over local lighthouses, buoys, or beacons, hereinafter termed "Local Authorities," the superintendence and management of all lighthouses, buoys, and beacons shall be vested in the following bodies; that is to say,

In England and Wales, and the islands of Jersey, Guernsey, Sark, and Alderney, and the adjacent seas and islands, and in Heligoland and Gibraltar, in the Trinity House:

In Scotland and the adjacent seas and islands, and in the Isle of Man, in the Commissioners of Northern Lighthouses hereinafter mentioned:

In Ireland and the adjacent seas and islands, in the Commisioners of Irish Lights (*this body was formerly called The Port of Dublin Corporation: see sec. 2, p. 3*).

And, subject to the provisions hereinafter contained, the said Trinity House, and Commissioners (hereinafter termed General Lighthouse Authorities) shall respectively continue to hold and maintain all property now vested in them in that behalf in the same manner and for the same purposes as they have hitherto held and maintained the same.

Incorporation of Commissioners of Northern Lighthouses.

390. The persons holding the following offices shall be a body corporate under the name of the Commissioners of Northern Lighthouses; that is to say,

(1.) The Lord Advocate and the Solicitor-General for Scotland;

(2.) The Lords Provosts of Edinburgh and Glasgow, and the Provosts of the cities of Aberdeen, Inverness, and Campbeltown;

(3.) The eldest Bailies of Edinburgh and Glasgow;

(4.) The Sheriffs of the counties of Edinburgh, Lanark, Renfrew, Bute, Argyle, Inverness, Ross, Orkney, Caithness, Aberdeen, Ayr, Fife, Forfar, Wigton, Sutherland, Kincardine, Kirkcudbright, and Elgin;

And shall have a common seal; and any five of such commissioners shall constitute a quorum, and shall have power to do all such matters and things as might be done by the whole body of commissioners.

Power to elect certain new members.

391. In addition to the persons above mentioned, it shall be lawful for the said commissioners at any time after this Act comes into operation to elect the provost or chief magistrate of any royal or parliamentary burgh on or near any part of the coasts of Scotland and the sheriff of any county abutting on such coasts.

Trinity House may inspect lighthouses in Scotland and Ireland.

392. The Trinity House, their engineers, workmen, and servants, may at all times enter any lighthouses within the jurisdiction of the said commissioners to view the condition thereof or otherwise for the purposes of this Act.

Board of Trade may appoint persons to inspect lighthouses, &c.

393. The Board of Trade may, upon complaint to the effect that any lighthouse, buoy, or beacon under the management of any of the said general lighthouse authorities, or any work connected therewith, is inefficient or improperly managed or unnecessary, authorise persons to inspect the same; and every person so authorised may inspect the same accordingly, and make such inquiries in respect thereof and of the management thereof, as he may think fit; and all officers and others having the care of such lighthouses, buoys, or beacons or concerned in the management thereof, shall furnish all such information and explanations in relation thereto as he may require; and the said general lighthouse authorities and their respective officers shall at all times give to the Board of Trade all such returns, explanations, or information in relation to the lighthouses, buoys, or beacons within their jurisdiction and the management thereof, as such board may from time to time require.

Power to general lighthouse authorities to control local authorities.

394. Each of the said general lighthouse authorities, upon giving due notice of their intention, shall have power, with the sanction of the Board of Trade, to compel any local authority having jurisdiction in the matter of lighthouses, buoys, or

§ 394. beacons at any place situate within the jurisdiction of such general lighthouse authority, to lay down buoys, or to remove or discontinue any existing lighthouse or beacon, or to make any variation in the character of any lighthouse or in the mode of exhibiting lights therein; and no such local authority as aforesaid shall erect any new lighthouse, or remove or discontinue any lighthouse, or vary the character of any lighthouse or the mode of exhibiting lights therein, without the sanction of the general lighthouse authority within whose jurisdiction the same is situate.

Lights, &c., under local authorities to be inspected, &c., by Trinity House, and other general authorities.

25 & 26 Vict. c. 63, s. 43.—The following rules shall be observed with respect to the inspection of local lighthouses, buoys, and beacons; that is to say,

(1.) It shall be the duty of each of the general lighthouse authorities, or of such persons as may be authorised by such authority for the purpose, to inspect all lights, buoys, and beacons situate within the limits of the jurisdiction of such general authority, but belonging to or under the jurisdiction of any local authorities, and to make such inquiries in respect thereof and of the management thereof as they may think fit:

(2.) All officers and others having the care of such lighthouses, buoys, or beacons, or concerned in the management thereof, shall furnish all such information and explanations concerning the same as they may require:

(3.) All such local authorities and their respective officers shall at all times give to the inspecting authority all such returns, explanations, or information concerning the lighthouses, buoys, and beacons within their jurisdiction, and the management thereof, as the said authority may from time to time require:

(4.) The inspecting authority shall communicate to each local authority the results of its inspection of the lighthouses, buoys, and beacons within its jurisdiction, and shall also make general reports of the results of its inspection of local lighthouses, buoys, and beacons to the Board of Trade; and such reports shall be laid before Parliament:

(5.) The powers given by the 394th section of the Principal Act to the general lighthouse authorities shall, so far as the same are applicable, extend and apply to the case of local buoys and beacons, other than local buoys and beacons placed or erected for temporary purposes, as well as to the case of local lighthouses.

395. If any local authority having power to erect, maintain, or place any local lighthouse, buoy, or beacon at any place within the jurisdiction of one of the said general lighthouse authorities fails so to do, or fails to obey any direction given by such authority under the last preceding section, Her Majesty may, upon application from such general lighthouse authority, by Order in Council direct that such power as aforesaid shall be transferred to such last-mentioned authority; and such power, together with all powers of levying and receiving dues in respect of such lighthouse, buoy, or beacon, shall thereupon become vested in such last-mentioned authority; and such lighthouse, with its appurtenances, and also such buoy or beacon, and all dues leviable in respect thereof, shall thenceforth be subject in all respects to the same regulations as other lighthouses and light dues, buoys, and beacons provided for by this Act.

In case of default by local bodies local lighthouses may be transferred to general lighthouse authorities.

Light Dues.

396. Subject to any alterations to be made under the powers hereinafter contained, the said general lighthouse authorities shall, in respect of the existing lighthouses, buoys, or beacons within their respective jurisdictions, continue to levy dues, hereinafter called light dues, after the rate at which the same are levied at the time when this Act comes into operation; and such light dues shall be payable in respect of all ships whatever, except ships belonging to Her Majesty, and ships hereby exempted from payment thereof.

Dues to be levied.

397. Her Majesty may, by and with the advice of Her Privy Council, from time to time reduce all or any of the dues for the time being payable in respect of existing or future lighthouses, buoys, or beacons, for the time being under the management of the said general lighthouse authorities; and may also, by and with the like advice, from time to time increase or vary any of such dues, so that no dues payable in respect of any lighthouse, buoy, or beacon existing at the time when this Act comes into operation are made to exceed the amount which has at any period previous to such time been received in respect thereof, or to which the said dues might during any part of such period as last aforesaid lawfully have been raised.

Light dues to be subject to revision by Her Majesty in council.

398. Each of the said general lighthouse authorities shall

Powers of general light-

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have power, with the consent of Her Majesty in Council, to do any of the following things; that is to say,

House authorities to alter and regulate dues.

To exempt any ships or any classes of ships from the payment of light dues receivable by such authority, and to annex any terms or conditions to such exemptions:

To alter the times, places, and modes at and in which the light dues receivable by such authority are payable:

To substitute any other dues or class of dues, whether by way of annual payment or otherwise, in respect of any ships or classes of ships, for the dues payable to such authority for the time being.

Publication of dues and regulations.

399. Tables of all light dues, and a copy of the regulations for the time being in force in respect thereof, shall be posted up at all custom houses within the United Kingdom; and each of the said general lighthouse authorities shall from time to time as occasion requires furnish copies of such tables and regulations to the Commissioners of Customs in London, and to the principal officers of customs resident at all places where light dues are collected on account of such lighthouse authority; and such copies shall be posted up by the commissioners at the Custom House in London, and by such officers at the custom houses of the places at which they are respectively resident.

Ship not to be cleared without production of receipt for light dues.

400. A receipt for light dues shall be given by the person appointed to collect the same to every person paying the same, and no officer of customs at any port where light dues are payable in respect of any ship shall grant a clearance or transire for any such ship unless the receipt for the same is produced to him.

Liability for and recovery of light dues.

25 & 26 Vict. c. 63, s. 44.—The following persons shall be liable to pay light dues for any ship in respect of which light dues are payable; (that is to say,) the owner or master, or such consignees or agents thereof as have paid or made themselves liable to pay any other charge on account of such ship in the port of her arrival or discharge, and in default of payment such light dues may be recovered in the same manner as penalties of the like amount may be recovered by virtue of the Principal Act.

Power of distress for light dues.

401. If the owner or master of any ship fails on demand of the authorised collector to pay the light dues due in respect

thereof, it shall be lawful for such collector, in addition to any other remedy which he or the authority by whom he is appointed is entitled to use, to enter upon such ship, and distrain the goods, guns, tackle, or any other thing of or belonging to or on board such ship, and to detain such distress until the said light dues are paid; and if payment of the same is not made within the period of three days next ensuing such distress, he may, at any time during the continuance of such nonpayment, cause the same to be appraised by two sufficient persons or sworn appraisers, and thereupon sell the same, and apply the proceeds in payment of the light dues due, together with all reasonable expenses incurred by him under this section, paying the surplus (if any) on demand to the said owner or master.

Powers of consignees to retain light dues paid by them.

25 & 26 Vict. c. 63, s. 45.—Every consignee and agent (not being the owner or master) hereby made liable for the payment of light dues in respect of any ship may, out of any moneys in his hands received on account of such ship, or belonging to the owner thereof, retain the amount of all dues so paid by him, together with any reasonable expenses he may have incurred by reason of such payment or liability.

Light dues, how to be paid over and accounted for.

402. Every person appointed to collect light dues by any of the said general lighthouse authorities shall collect all light dues payable at the port or place at which he is so appointed, whether the same be collected on account of such last-mentioned authority or of the other general lighthouse authorities, and shall pay over to the general lighthouse authority by whom he was appointed, or as it directs, the whole amount of light dues received by him; and the authority so receiving the same shall keep accounts thereof, and shall cause the same to be remitted to Her Majesty's Paymaster-General in such manner as the Board of Trade directs.

Application of light dues.

403. All light dues coming to the hands of any of the said general lighthouse authorities under this Act shall be carried to the account of the Mercantile Marine Fund hereinafter mentioned, and shall be dealt with in manner hereinafter prescribed. (*See Part* VII., *p.* 358.)

Local Light Dues.

Dues may be levied for local lights.

25 & 26 Vict. c. 63, s. 46.—If any lighthouse, buoy, or beacon is erected or placed, or reconstructed, repaired, or replaced by any local authority having jurisdiction in the matter

§ 403. of lighthouses, buoys, or beacons, Her Majesty may, on the application of the said local authority, by Order in Council fix such dues to be paid to the said local authority in respect of every ship which enters the port or harbour under the jurisdiction of such local authority or the estuary wherein such lighthouse, buoy, or beacon is situate, and which passes the said lighthouse, buoy, or beacon, and derives benefit therefrom, as Her Majesty may deem reasonable:

The dues for the time being fixed by any such Order in Council as aforesaid shall be paid accordingly by the master of the said ship or other person or persons by whom the said light dues, if levied by one of the general lighthouse authorities, would be payable, and shall be recoverable in the same manner as light dues payable to such general authorities are recoverable.

Application of and accounts of such dues.

25 & 26 Vict. c. 63, s. 47.—All light dues leviable by any local authority under this Act shall be applied for the purposes of the construction, placing, maintenance, and improvement of the lighthouses, buoys, and beacons in respect of which the same are levied, and for no other purpose:

The local authority to whom the same are paid shall keep a separate account of the receipt and expenditure of such dues, and shall once in every year, or at such other time as the Board of Trade may determine, send a copy of such account to the Board of Trade, and shall send the same in such form and shall give such particulars in relation thereto as the Board of Trade may require:

Her Majesty may by Order in Council from time to time reduce, alter, or increase all or any of such dues, so that the same may, so far as it is practicable, be sufficient and not more than sufficient for the payment of the expenses incurred by the local authority in respect of the lighthouses, buoys, or beacons for which the dues are levied.

Colonial Lighthouses and Dues.

Her Majesty may by Order in Council fix dues for colonial lighthouses.

18 & 19 Vict. c. 91, s. 2.—In any case in which any lighthouse, buoy, or beacon has been or is hereafter erected or placed, on or near the coasts of any British possession, Her Majesty may by Order in Council fix such dues in respect thereof, to be paid by the owner or master of every ship which passes the same or derives benefit therefrom, as Her Majesty may deem reasonable, and may in like manner from time to time increase, diminish, or repeal such dues, and from the time specified in such Order for the commencement of the dues thereby fixed, increased, or diminished, the same shall be leviable throughout Her Majesty's dominions in the manner hereinafter mentioned.

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18 & 19 Vict. c. 91, s. 3.—No such dues as aforesaid shall be levied in any colony unless and until the legislative authority in such colony has, either by address to the Crown, or by an Act or ordinance duly passed, signified its opinion that the same ought to be levied in such colony.

No such dues to be levied in any colony without the consent of the colonial legislature.

18 & 19 Vict. c. 91, s. 4.—The said dues shall in the United Kingdom be collected by the same persons by whom, and by the same means, in the same manner and subject to the same conditions, so far as circumstances permit, by, in, and subject to which the light dues leviable under the Merchant Shipping Act, 1854, are collected; and shall in each British possession abroad be collected by such persons as the governor of such possession abroad may appoint for the purpose, and shall be collected by the same means, in the same manner, and subject to the same conditions, so far as circumstances permit, by, in, and subject to which the light dues leviable under the Merchant Shipping Act, 1854, are paid and collected, or by such other means, in such other manner, and subject to such other conditions as the legislative authority in such possession may direct.

Mode of collecting the said dues.

18 & 19 Vict. c. 91, s. 5.—All dues levied under this Act shall be paid over to Her Majesty's Paymaster-General, at such times and in such manner as the Board of Trade may direct, and shall be applied, paid, and dealt with by him for the purposes hereinafter mentioned, in such manner as such Board may direct.

Dues to be paid to Her Majesty's Paymaster-General.

18 & 19 Vict. c. 91, s. 6.—The dues levied under the authority of this Act in respect of any such lighthouse, buoy, or beacon as aforesaid, shall, after deducting any expenses incurred in collecting the same, be applied for the purpose of paying the expenses incurred in erecting and maintaining such lighthouse, buoy, or beacon, and for no other purpose whatever.

Dues to be applied to expenses of lighthouse, &c., for which they are levied.

18 & 19 Vict. c. 91, s. 7.—For the purpose of constructing or repairing any such lighthouse, buoy, or beacon as aforesaid, the Board of Trade may raise upon the security of the dues to be levied in respect thereof such sums of money as they may deem fit; and the commissioners of Her Majesty's Treasury, out of any monies which may be provided by Parliament, the Public Works Loan Commissioners, or any other person or body of persons, may advance the same accordingly, such advances to be made in the same manner, with the same powers and subject to the same provisions, so far as circumstances permit, in, with, and subject to which under the Merchant Shipping Act, 1854, advances may be made upon the security of the Mercantile Marine Fund, for the construction and repair of lighthouses in the United Kingdom.

Power to borrow money on security of dues.

18 & 19 Vict. c. 91, s, 8.—Accounts shall be kept of all sums expended in the construction, repair, or maintenance of every lighthouse, buoy, or beacon in the British possessions

Accounts for each lighthouse, &c., to

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abroad, for which dues are levied under the authority of this Act, and of the dues received in respect thereof, in such manner as the Board of Trade may direct, and shall be laid before Parliament annually; and the said accounts shall be audited in such manner as Her Majesty may, by Order in Council, direct.

be kept and laid before Parliament, and to be audited.

Construction of and Dues for New Lighthouses.

Power to lighthouse authorities to erect, place, and alter lighthouses, buoys, and beacons.

404. Each of the said general lighthouse authorities shall have power, within its jurisdiction, to execute the following works and do the following things (that is to say):

(1.) To erect or place new lighthouses, with all requisite works, roads, and appurtenances, or alter or remove any existing lighthouses:

(2.) To erect or place any new buoys or beacons, or alter or remove any existing buoys or beacons:

(3.) To take and purchase any land which may be necessary for the above purposes, or for the maintenance of the works or the residence of the light-keepers:

(4.) To vary the character of any lighthouse or the mode of exhibiting lights therein:

(5.) To sell any land belonging to it:

But the exercise of the above power shall, in the case of the said commissioners, be subject to the restrictions hereinafter contained.

This power in the case of the commissioners to be subject to approval of Trinity House, with appeal to Board of Trade.

405. Previously to undertaking any such work as aforesaid, the said commissioners shall forward a notice specifying fully the nature of the work proposed to be undertaken by them, and their reasons for undertaking the same, to the Trinity House, who shall take the proposed scheme into their consideration, and notify to the said commissioners their approval or rejection thereof with or without modifications; but no such notification shall be binding on the said commissioners until the same has been sanctioned by the Board of Trade in manner hereinafter mentioned; and at any time previous to such sanction being given, the said commissioners may forward to the Trinity House and the Board of Trade, or either of them, any objections to, or observations upon, or suggestions in respect of, such notification.

Sanction of Board of Trade, how to be obtained.

406. In order to obtain such sanction as aforesaid, the Trinity House shall forward a copy of their notification, accom-

panied by copies of all communications that have passed between the Trinity House and the said commissioners to the Board of Trade; and such Board shall have power to give any directions they may think fit in relation to the matters submitted to them, by granting or withholding their sanction, either wholly or partially, and either with or without modification.

Trinity House to inform lighthouse authorities of decision of Board of Trade.

407. The Trinity House shall forthwith communicate the directions given by the Board of Trade in relation to the matters aforesaid to the said commissioners, and the said commissioners shall, upon the receipt of such directions, be bound to act in conformity therewith, and to do or forbear doing anything thereby directed to be done or foreborne.

Power to TrinityHouse, with sanction of Board of Trade, to compel execution of works by commissioners.

408. The Trinity House shall have power to direct the said commissioners to execute the following works; (that is to say,)

(1.) To continue any existing lighthouses, buoys, or beacons:

(2.) To erect or place any new lighthouses, buoys, or beacons, or alter or remove any existing lighthouses, buoys, or beacons:

(3.) To vary the character of any lighthouse, or the mode of exhibiting lights therein:

But no such directions shall be issued to the said commissioners until the issue thereof has been sanctioned by the Board of Trade; such sanction to be obtained by the Trinity House in manner hereinafter mentioned.

Sanction of Board of Trade, how to be obtained.

409. Previously to issuing any such direction as aforesaid, the Trinity House shall make an application to the Board of Trade, stating fully the nature of the work to which such directions relate, and their reasons for directing the same; and shall at the same time give notice to the said commissioners of such their application, by causing written notice of the said application and a copy of the proposed directions to be left at or sent to the office of the said commissioners in Edinburgh, or the office of the said commissioners in Dublin, as the case may be; and opportunity shall be afforded to the said commissioners to submit any observations they may see fit to make with respect to such application to the Trinity House and to the Board of Trade; and if thereupon the said Trinity House adhere to their said directions, and if the Board of Trade concur

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therein, and if such adherence and concurrence is duly notified to the said commissioners, it shall be their duty within a reasonable time after such notification is made to carry the said directions into effect.

Her Majesty may by Order in Council fix dues to be taken for new lighthouses.

410. Upon the completion of any new lighthouse, buoy, or beacon, Her Majesty may by Order in Council fix such dues in respect thereof to be paid by the master or owner of every ship which passes the same or derives benefit therefrom, as Her Majesty may deem reasonable, and may from time to time alter the amount thereof; and such dues shall be paid and collected in the same manner, by the same means, and subject to the same conditions in, by, and subject to which the light dues authorised to be levied by this act are paid and collected.

No dues to be levied in the Channel Islands without consent of the States, and no power to be exercised therein but by Order in Council.

411. No dues for any lighthouse, buoy, or beacon to be erected or placed in or near the islands of Guernsey, Jersey, Sark, or Alderney shall be taken in the said islands of Guernsey or Jersey without the consent of the States of the said islands respectively; nor shall any powers hereinbefore given to the Trinity House in respect of any lighthouse, buoy, or beacon erected or placed in the islands of Guernsey or Jersey, or hereafter to be erected or placed in such islands, be exercised without the consent of Her Majesty in Council.

Incorporation

412. The Lands Clauses Consolidation Act, 1845, and the Lands Clauses Consolidation Act (Scotland), 1845, shall be incorporated in this Act, and shall apply to all lighthouses to be constructed and all land to be purchased under the powers thereof.

Surrender of Local Lighthouses.

Local lighthouses may be surrendered to general lighthouse authorities.

413. Every local authority holding any lighthouse, buoy, or beacon at any place within the jurisdiction of any of the said general lighthouse authorities may, if they think fit, surrender or sell the same to such general lighthouse authority, and such authority may, with the consent of the Board of Trade, accept or purchase the same, the purchase money (if any) to be paid out of the said mercantile marine fund; and thereupon such lighthouse and its appurtenances or such buoy or beacon, as the case may be, shall become vested in such authority; and such authority shall be entitled to receive all dues lawfully payable in respect thereof at the time of such surrender or sale, or, if Her Majesty by Order in Council so directs, such

dues as might be fixed and made payable if the same were a new lighthouse, buoy, or beacon: and such lighthouse, buoy, or beacon, and the dues payable in respect thereof, shall, after such surrender or sale, be subject in all respects to the same regulations as other lighthouses and light dues, buoys, and beacons provided for by this Act.

Damage to Lights, Buoys, and Beacons.

Penalty for injuring lights, buoys, and beacons.

414. If any person wilfully or negligently commits any of the following offences; (that is to say,)

(1.) Injures any lighthouse or the lights exhibited therein, or any buoy or beacon;

(2.) Removes, alters, or destroys any lightship, buoy, or beacon;

(3.) Rides by, makes fast to, or runs foul of any lightship or buoy;

He shall, in addition to the expenses of making good any damage so occasioned, incur a penalty not exceeding 50*l.*

Prevention of False Lights.

General lighthouse authorities may prohibit false lights.

415. Whenever any fire or light is burnt or exhibited at such place or in such manner as to be liable to be mistaken for a light proceeding from a lighthouse, it shall be lawful for the general lighthouse authority within whose jurisdiction such place is situate, to serve a notice upon the owner of the place where the fire or light is burnt or exhibited, or on the person having the charge of such fire or light, either personally or by delivery at the place of abode of such owner or person, or by affixing the same in some conspicuous spot near to such fire or light, and by such notice to direct such owner or person, within a reasonable time to be therein specified, to take effectual means for the extinguishing or effectually screening such existing light, and for preventing for the future any similar fire or light; and any owner or person disobeying such notice shall be deemed guilty of a common nuisance, and in addition to any other penalties or liabilities of any kind thereby incurred, shall incur a penalty not exceeding 100*l.*

If not obeyed they may abate such lights.

416. If any owner or person served with such notice as aforesaid neglects for a period of seven days to extinguish or

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effectually screen the fire or light therein mentioned, it shall be lawful for the general lighthouse authority within whose jurisdiction the same may be, by their servants or workmen, to enter upon the place whereon the same may be, and forthwith to extinguish such fire or light, doing no unnecessary damage; and all expenses incurred by such authority in such extinction may be recovered from such person or owner as aforesaid in the same way as penalties are hereby directed to be recoverable.

PART VII.

MERCANTILE MARINE FUND.

Sums to be carried to Mercantile Marine Fund.

417. The following sums shall be carried to a common fund, to be entitled the "Mercantile Marine fund (that is to say),

(1.) All fees and other sums (other than fines and forfeitures) received by the Board of Trade under the provisions of the Third and Fourth Parts of this Act:

(2.) All light dues or other sums received by or accruing to the Trinity House, the Commissioners of Northern Lighthouses, and the Commissioners of Irish Lights under the Sixth Part of this Act:

7 Vict. c. 57.

(3.) All rates and monies received by the Trinity House under the local act of the seventh year of Her present Majesty, chapter 57, for the regulation of lastage and ballastage in the river Thames:

(4.) All fees and other sums mentioned in the table marked V. in the schedule hereto which are received by receivers appointed under the Eighth Part of this Act:

And an account of the said fund, intituled "The Mercantile Marine Fund Account," shall be kept with Her Majesty's Paymaster-General.

Table V. is set out under section 455, p. 376. By the Chain Cables and Anchors Act, 1874 (37 & 38 Vict. c. 51, s. 2), all fees paid to the Board of Trade and all fees received by the Trinity House in pursuance of the Chain Cables, &c., Act, 1864, are to be carried to the Mercantile Marine Fund, and the expenses of the Board of Trade under that Act are to be defrayed out of it.

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Application of Mercantile Marine Fund.

418. Subject to any prior charges that may be subsisting thereon by virtue of any Act or Acts of Parliament or otherwise, the said fund shall be chargeable with the following expenses; (that is to say,)

(1.) The salaries and other expenses connected with the local marine boards, the examinations, and the mercantile marine offices, provided for by the Third Part of this Act:

(2.) *The salaries of surveyors, and other expenses connected with the survey of passenger steam ships provided for by the Fourth Part of this Act* (a):

(3.) All expenses incurred by the general lighthouse authorities aforesaid in the works and services of lighthouses, buoys, and beacons provided for by the Sixth Part of this Act, or in the execution of any works necessary or expedient for the purpose of permanently reducing the expense of such works and services:

(4.) All expenses incurred by the Trinity House in respect of lastage and ballastage in the river Thames:

(5.) Such expenses for establishing and maintaining on the coasts of the United Kingdom proper life-boats, with the necessary crews and equipments, and for affording assistance towards the preservation of life and property in cases of shipwreck and distress at sea, and for rewarding the preservation of life in such cases, as the Board of Trade directs:

(6.) Any expenses incurred in carrying into effect the provisions with regard to receivers and the performance of their duties contained in the Eighth Part of this Act:

(7.) Any expenses which by this or any other Act of Parliament are specially charged thereon:

And shall, save as hereinafter mentioned, be applicable to no other purpose whatever.

Expenses in Preserving Life.

Expenses of lifeboats, &c., may be charged on Mercantile Marine Fund.

17 & 18 Vict. c. 120, s. 7.—The Board of Trade may, out of the Mercantile Marine Fund, direct payment to be made of such expenses for establishing and maintaining on the coasts

(a) Subs. (2) of s. 418 is repealed from 1st January, 1877, by 39 & 40 Vict. c. 80, s. 45.

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of the United Kingdom proper life boats, with the necessary crews and equipments, and for affording assistance towards the preservation of life and property in cases of shipwreck and distress at sea, and for the granting rewards for the preservation of life in such cases as it thinks fit.

Salaries of surveyors.

39 & 40 Vict. c. 80, (*part of*) sec. 39.—On and after the same day (1st January, 1877) the salaries of all surveyors appointed under the Merchant Shipping Acts, 1854 to 1876, and so much of the expenses connected with the survey and measurement of ships under those Acts, and of the salaries and expenses of persons employed under the Passengers Act, 1855, as has heretofore been paid out of the Mercantile Marine Fund, shall be paid out of moneys provided by Parliament, and the Treasury shall have the like control over such salaries and expenses as has heretofore been vested in the Board of Trade.

Application of ballastage rates. 6 & 7 Vict. c. lvii.

419. The said rates and moneys received by the Trinity House under the said local Act of the seventh year of Her present Majesty, chapter 57, shall, subject to the payment of such proportion of any prior charges subsisting on the Mercantile Marine Fund as may in the opinion of the Board of Trade be fairly chargeable thereon, and to the powers of raising money upon the credit of the said fund herein contained, be applicable only to services performed for the purpose of supplying ballast to or providing for the safety or convenience of such ships as navigate the said river Thames and the seas and channels leading thereto between Orfordness on the north and Dungeness on the south: Provided that if, in addition to the duties performed in consideration of the said ballastage rates under the said local Act, the Trinity House, at the request or with the consent of the owners or masters of or agents for any ships, undertake to place ballast on board thereof, or to unload ballast therefrom, they shall be entitled to charge for such additional duties such reasonable additional rate per ton for ballast so placed on board or unladen as Her Majesty by Order in Council from time to time approves.

Establishments for lighthouses and ballastage charged on fund to be fixed by Her Majesty in Council.

420. Her Majesty may from time to time, by and with the advice of her Privy Council, fix the establishments to be maintained by each of the said general lighthouse authorities on account of the services of lighthouses, buoys, and beacons, and also as regards the Trinity House, on account of the service of lastage and ballastage in the river Thames, or the annual or

other sums to be paid out of the said fund, in respect of such establishments; and if it appears that any part of the establishments of the said lighthouse authorities is maintained for the purposes of such duties and also for other purposes, to fix and from time to time alter the portion of the expense of such establishments to be paid out of the said fund; and no increase of any establishment or part of an establishment so fixed shall be made without the consent of the Board of Trade.

Power to grant superannuation allowances.

421. The said general lighthouse authorities may from time to time, with the sanction of the Board of Trade, grant superannuations or compensations to persons whose salaries are payable out of the said fund, and who are discharged or retire; so nevertheless that no superannuation allowance or compensation to any person so discharged or retiring shall exceed the proportion of his salary which might be granted to a person in the public civil service, under the Superannuation Act 1859 (22 Vict. c. 26, s. 15), or under any other Act for regulating such superannuation allowances or compensations for the time being in force.

Estimates and accounts for other expenses to be approved by the Board of Trade.

422. Each of the said general lighthouse authorities shall from time to time submit to the Board of Trade estimates of all expenses to be incurred by them in respect of the matters aforesaid, other than the establishment expenses for the time being allowed by Order in Council as aforesaid; and shall also, whenever in providing for any sudden emergency it is necessary to incur any expense without waiting until an estimate can be sanctioned, as soon as possible send to the Board of Trade a full account of such expense; and the Board of Trade shall consider and may approve such estimates and accounts, either with or without modification.

No expense to be allowed unless sanctioned by Board of Trade.

423. No expense of any of the said general lighthouse authorities in respect of the said services shall be paid out of the Mercantile Marine Fund, or allowed in account, other than the sums so allowed for establishment expenses as aforesaid, or included in estimates or accounts approved by the Board of Trade.

For the purpose of erecting and repairing lighthouses, and other extraordinary

424. For the purpose of the construction and repair of lighthouses, and of other extraordinary expenses connected with the said services, the Treasury are authorised from time to time, upon the application of the Board of Trade, to advance out of the growing produce of the Consolidated Fund of the

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expenses, Treasury may advance money.

United Kingdom such sums of money, upon such terms, and at such rate of interest as they think fit, and to pay the same into the Mercantile Marine Fund account, so nevertheless that the whole sum for the time being due in respect of such advances shall never at any one time exceed £200,000; and upon any advance being so made the sum so advanced and the interest shall be a charge on the Mercantile Marine Fund, and upon the dues, rates, fees, and payments so to be carried thereto as aforesaid; and the Board of Trade shall make such provision for the repayment thereof out of the said fund, either by forming a sinking fund or otherwise, as the Treasury may require; provided that no such advance shall prevent any lawful reduction of any of the said dues, rates, fees, or payments, if such reduction be assented to by the Treasury.

Power to Board of Trade to borrow money on the credit of fund.

425. The Board of Trade may also, for the purpose last aforesaid, raise money by mortgaging the Mercantile Marine Fund, and the several dues, rates, fees, and payments so to be carried thereto as aforesaid, or any of them, or any part thereof, to any person or body of persons; and every such mortgage shall be in such form, and under the hand and seal of such person or persons, as the president of the said board for the time being may direct; and no person or body of persons lending money upon any such mortgage shall be bound to see to the purpose for which the same is raised, or to the mode in which it is applied.

Power to Public Works Loan Commissioners to advance money on the credit of the fund.

426. The Public Works Loan Commissioners may also, for the purpose last aforesaid, advance money upon mortgage of the said Mercantile Marine Fund, and the several dues, rates, fees, and payments so to be carried thereto as aforesaid, or any of them, or any part thereof, without requiring any further security than such mortgage as aforesaid; but every mortgage so made to the said Public Works Loan Commissioners, or their secretary for the time being, shall be made under and in pursuance of the Acts of Parliament regulating the proceedings of the said Public Works Loan Commissioners, anything herein contained to the contrary notwithstanding: Provided, that no advance which may be made by the said Public Works Loan Commissioners shall prevent any lawful reduction of any of the said dues, rates, fees, or payments, if such reduction is assented to by the said Public Works Loan Commissioners.

Lighthouse authorities

427. Each of the said general lighthouse authorities shall

account to the Board of Trade for their receipts from the said light dues and ballastage rates, and for their expenditure as regards expenses paid out of the said fund, in such form, and at such times, and with such details, explanations, and vouchers, as the Board of Trade requires, and shall, when required by such board, permit all books of accounts kept by or under their respective direction to be inspected and examined by such persons as the said board appoints for that purpose.

to account for receipt and expenditure to Board of Trade.

428. The Board of Trade shall render to the commissioners for auditing the public accounts periodical accounts of the whole of the receipts and expenditure of the Mercantile Marine Fund, such accounts to be signed and declared to by the accountant appointed by the Board of Trade for that purpose; and in case of default it shall be lawful for the Treasury to make or direct such allowance as under the circumstances of the case they may think fit in respect thereof.

Accounts of fund to be audited by commissioners of audit.

429. The Board of Trade shall as soon as practicable after the meeting of parliament in every year cause the account of the Mercantile Marine Fund for the then preceding year to be laid before both houses of parliament.

Accounts to be laid before parliament.

430. All lighthouses, buoys, beacons, and light dues, and all other rates, fees, or payments accruing to or forming part of the said fund, and all premises or property belonging to or occupied by any of the said general lighthouse authorities or the Board of Trade, which are used or applied for the purposes of any of the services for which such dues, rates, fees, and payments are received, and all instruments or writings used by or under the direction of any of the said general lighthouse authorities or the Board of Trade in carrying on the said services shall be exempted from all public, parochial, and local taxes, duties, and rates of every kind.

Property used for the purposes of Parts III. and VI. of Act, to be exempt from all rates and taxes.

431. The ships belonging to or used by any of the said general lighthouse authorities, or by the Board of Trade shall be privileged to enter, resort to and use any harbours, ports, docks, or piers in the United Kingdom without payment of any tolls, dues, or rates of any kind.

Ships of lighthouse authorities exempt from harbour dues.

25 & 26 Vict. c. 63, s. 48. The 431st section of the Principal Act shall be read as if after the word "ships" there were inserted the words "and boats."

Exemption extended to boats.

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PART VIII.

WRECKS CASUALTIES, AND SALVAGE.

Inquiries into Wrecks.

Inquiries to be instituted in cases of wreck and casualty.

432. In any of the cases following, that is to say,

Whenever any ship is lost, abandoned, or materially damaged on or near the coasts of the United Kingdom;

Whenever any ship causes loss or material damage to any other ship on or near such coasts;

Whenever by reason of any casualty happening to or on board of any ship on or near such coasts loss of life ensues;

Whenever any such loss, abandonment, damage, or casualty happens elsewhere, and any competent witnesses thereof arrive or are found at any place in the United Kingdom;

It shall be lawful for the inspecting officer of the coast guard or the principal officer of customs residing at or near the place where such loss, abandonment, damage, or casualty occurred, if the same occurred on or near the coasts of the United Kingdom, but if elsewhere at or near the place where such witnesses as aforesaid arrive or are found or can be conveniently examined, or for any other person appointed for the purpose by the Board of Trade, to make inquiry respecting such loss, abandonment, damage, or casualty; and he shall for that purpose have all the powers given by the First Part of this Act to inspectors appointed by the said board.

The powers of these inspectors are given in sec. 15, p. 12.

Power to hold inquiries or formal investigations as to stranded and missing ships.

39 & 40 Vict. c. 80, s. 32.—In the following cases:—

(1.) Whenever any ship on or near the coasts of the United Kingdom or any British ship elsewhere has been stranded or damaged, and any witness is found at any place in the United Kingdom, or

(2.) Whenever a British ship has been lost or is supposed to have been lost, and any evidence can be obtained in the United Kingdom as to the circumstances under which she proceeded to sea or was last heard of,

the Board of Trade (without prejudice to any other powers)

may if they think fit, cause an inquiry to be made or formal investigation to be held, and all the provisions of the Merchant Shipping Acts, 1854 to 1876, shall apply to any such inquiry or investigation as if it had been made or held under the eighth part of the Merchant Shipping Act, 1854.

Place of investigation.

39 & 40 Vict. c. 80, s. 33.—A formal investigation into a shipping casualty may be held at any place appointed in that behalf by the Board of Trade, and all enactments relating to the authority holding the investigation shall, for the purpose of the investigation, have effect as if the place so appointed were a place appointed for the exercise of the ordinary jurisdiction of that authority.

These new provisions of the Merchant Shipping Act, 1876, give the Board of Trade power to cause an inquiry into the wreck of any British ship occurring anywhere, and the Board may now appoint any place to be the seat of the inquiry. Sub-sec. (2) of sec. 32 of the Merchant Shipping Act, 1876, gives entirely new powers of causing an inquiry into the loss of British ships. By sec. 432, it could only be instituted when any competent witnesses arrived, or were found in the United Kingdom, but it can now be made when any evidence can be obtained in the Kingdom as to the circumstances of the case.

Formal investigation before justices.

433. If it appears to such officer or person as aforesaid, either upon or without any such preliminary inquiry as aforesaid, that a formal investigation is requisite or expedient, or if the Board of Trade so directs, he shall apply to any two justices or to a stipendiary magistrate to hear the case; and such justices or magistrate shall thereupon proceed to hear and try the same, and shall for that purpose, so far as relates to the summoning of parties, compelling the attendance of witnesses, and the regulation of the proceedings, have the same powers as if the same were a proceeding relating to an offence or cause of complaint upon which they or he have power to make a summary conviction or order, or as near thereto as circumstances permit; and it shall be the duty of such officer or person as aforesaid to superintend the management of the case, and to render such assistance to the said justices or magistrates as is in his power; and, upon the conclusion of the case, the said justices or magistrate shall send a report to the Board of Trade, containing a full statement of the case and of their or his opinion thereon, accompanied by such report of or extracts from the evidence, and such observations (if any) as they or he may think fit.

434. *Repealed by* 39 & 40 Vict. c. 80, s. 45.

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435. In places where there is a local marine board, and where a stipendiary magistrate is a member of such board, all such investigations as aforesaid shall, whenever he happens to be present, be made before such magistrate; and there shall be paid to such magistrate in respect of his services under this Act such remuneration, whether by way of annual increase of of salary or otherwise as Her Majesty's Secretary of State for the Home Department, with the consent of the Board of Trade, may direct; and such remuneration shall be paid out of the Mercantile Marine Fund.

Stipendiary magistrate to be the magistrate who is member of local marine board, and to be paid.

436. The said justices or magistrate may make such order with respect to the costs of any such investigation or any portion thereof as they or he may deem just, and such costs shall be paid accordingly, and shall be recoverable in the same manner as other costs incurred in summary proceedings before them or him; and the Board of Trade may, if in any case it thinks fit so to do, pay the expense of any such investigation, and may pay to such assessor as aforesaid such remuneration as it thinks fit.

Costs of such investigations.

437. In the case of any such investigation as aforesaid to be held in Scotland, the Board of Trade may, if it so thinks fit, remit the same to the Lord Advocate to be prosecuted in such manner as he may direct. (*The rest of this section is repealed by* 39 & 40 Vict. c. 80, s. 45.)

Investigations in Scotland.

438. Such justices or magistrate as aforesaid may, or in Scotland such person or persons as is or are directed by the Lord Advocate to conduct the investigation may, if they or he think fit, require any master or mate possessing a certificate of competency or service whose conduct is called in question or appears to them or him likely to be called in question in the course of such investigation, to deliver such certificate to them or him, and they or he shall hold the certificate so delivered until the conclusion of the investigation, and shall then either return the same to such master or mate, or, if their report is such as to enable the Board of Trade to cancel or suspend such certificate under the powers given to such board by the Third Part of this Act, shall forward the same to the Board of Trade, to be dealt with as such board thinks fit; and if any master or mate fails so to deliver his certificate when so required, he shall incur a penalty not exceeding 50*l.*

Master or mate may be required to deliver certificate to be held until close of inquiry.

The provisions relating to certificates of competency and service are set out under sec. 134, p. 119.

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Wreck Commissioners.

Appointment, duties, and powers of wreck commissioners for investigating shipping casualties.

39 & 40 Vict. c. 80, s. 29.—For the purpose of rendering investigations into shipping casualties more speedy and effectual it shall be lawful for the Lord High Chancellor of Great Britain to appoint from time to time some fit person or persons to be a wreck commissioner or wreck commissioners for the United Kingdom, so that there shall not be more than three such commissioners at any one time, and to remove any such wreck commissioner; and in case it shall become necessary to appoint a wreck commissioner in Ireland, the Lord Chancellor of Ireland shall have the appointment and the power of removal of such wreck commissioner.

It shall be the duty of a wreck commissioner, at the request of the Board of Trade, to hold any formal investigation into a loss, abandonment, damage, or casualty (in this Act called a shipping casualty) under the eighth part of the Merchant Shipping Act, 1854, and for that purpose he shall have the same jurisdiction and powers as are thereby conferred on two justices, and all the provisions of the Merchant Shipping Acts, 1854 to 1876, with respect to investigations conducted under the eighth part of the Merchant Shipping Act, 1854, shall apply to investigations held by a wreck commissioner.

Assessors and rules of procedure on formal investigations into shipping casualties.

39 & 40 Vict. c. 80, s. 30.—The wreck commissioner, justices, or other authority holding a formal investigation into a shipping casualty shall hold the same with the assistance of an assessor or assessors of nautical engineering or other special skill or knowledge, to be appointed by the commissioner, justices, or authority out of a list of persons for the time being approved for the purpose by a Secretary of State.

The commissioner, justices, or authority, when of opinion that the investigation is likely to involve the cancellation or suspension of the certificate of a master or mate, shall, where practicable, appoint a person having experience in the merchant service to be one of the assessors.

Each assessor shall either sign the report made on the investigation, or report to the Board of Trade his reasons for his dissent therefrom.

Rules as to procedure fees, &c.

The Lord High Chancellor of Great Britain may from time to time, with the consent of the Treasury so far as relates to fees, make, and when made revoke, alter, and add to general rules for carrying into effect the enactments relating to formal investigations into shipping casualties, and in particular with respect to the summoning of assessors, the procedure, the parties, the persons allowed to appear, the notice to such parties and

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persons, or to persons affected, and the amount and application of fees.

All such rules, while in force, shall have effect as if enacted in this Act. (*The Rules are set out in the Appendix, pp.* 563—568.)

Defence of persons charged.

Every formal investigation into a shipping casualty shall be conducted in such manner that if a charge is made against any person that person shall have an opportunity of making a defence.

Remuneration.

Parliament to supply moneys.

39 & 40 Vict. c. 80, (*part of*) s. 39.—There may be paid out of moneys provided by Parliament, to any wreck commissioner, judge of a court of survey, assessor, registrar of a court of survey, detaining officer, scientific referee, and other officer or person appointed under this Act, such salary or remuneration (if any) as the Treasury from time to time direct.

Appointment and Duties of Receivers.

Board of Trade superintendents of wreck, with power to appoint receivers.

439. The Board of Trade shall throughout the United Kingdom have the general superintendence of all matters relating to wreck; and it may, with the consent of the Commissioners of Her Majesty's Treasury, appoint any officer of customs or of the coast guard, or any officer of inland revenue, or, when it appears to such board to be more convenient, any other person, to be a receiver of wreck in any district, and to perform such duties as are herein-after mentioned, and shall give due notice of every such appointment.

By 17 & 18 Vict. c. 120, s. 10, the office of Receiver-General of Droits of Admiralty, was transferred to the Board of Trade when the person then holding the office should vacate it.

Cinque Ports Officials.

Powers of Board of Trade as to appointment of receivers.

17 & 18 Vict. c. 120, s. 11.—Receivers appointed by the said Receiver-General under the Act of the tenth year of the reign of Her present Majesty, chapter ninety-nine, shall hold their offices only during the pleasure of the Board of Trade; and the Serjeants of the Admiralty of the Cinque Ports, their deputies or other officers, authorised to perform the duties and to exercise the powers within the jurisdiction of the Cinque Ports elsewhere performed and exercised by such receivers as aforesaid, shall perform and exercise the same only during the pleasure and subject to the directions of the Board of Trade; and all such receivers, serjeants, deputies, and other officers as aforesaid shall possess in the several districts within which they have hitherto exercised their duties the same powers, rights, and privileges,

and perform the same duties as are by the said Merchant Shipping Act, 1854, vested in and committed to the receivers therein mentioned, save only that they shall not be entitled to take the command in cases of ships or boats stranded or in distress, unless authorised so to do by the Board of Trade.

The limits of the Cinque Ports are defined by 1 & 2 Geo. 4, c. 76, s. 18. (See sec. 460, p. 386).

Wreck.

Definitions of wreck.

Wreck is defined in this Act (see sec. 2, p. 5) to include jetsam, flotsam, lagan, and derelict, found in or on the shores of the sea or any tidal water. By the old law *wreccum maris*, or wreck of the sea, was the name given to goods that were cast upon land after a shipwreck (*a*); if they remained at sea, the law distinguished them by the uncouth appellations of flotsam, jetsam, and lagan (*b*). All goods found afloat and derelict on the high seas, belong, as droits, to the Crown in its office of Admiralty (*c*), and wreck of the sea belonged *primâ facie* to the Crown by the common law, unless some living thing escaped to land out of the ship (*d*). And now if wreck is unclaimed for a year, it belongs to the Crown (see sec. 475, p. 398), unless the right to wreck has been granted to the manor (see sec. 454, p. 375). The rights of the Crown in its office of Admiralty extend from low water mark out to sea, and over the part between high and low water mark according as it is covered with water or not (*e*).

Extent of Admiralty jurisdiction of the Crown.

Floating timber.

Timber found floating at sea without an apparent owner, having drifted from a river where it was moored, was held not to be wreck within the meaning of this Act, on the ground that the Act was passed with reference to shipping, and flotsam, &c., are terms only applied to goods separated from a ship by some peril (*f*). Salvage may be awarded for bringing in an Admiralty droit (*g*). The goods of pirates are droits, that is, the pirates' own goods, not those they have taken from other men (*h*).

Salvage for Admiralty droits.

Admiral not to interfere with wreck.

440. No admiral, vice-admiral, or other person, under whatever denomination, exercising Admiralty jurisdiction, shall, as such, by himself or his agents, receive, take, or interfere with any wreck except as hereinafter mentioned.

See sec. 445, p. 371, as to who may act when the receiver is absent. As to the wreck commissioners appointed under the Merchant Shipping Act, 1876, see under sec. 438, p. 367.

(*a*) *Sir R. Constable's Case* (1369), 5 Co. Rep. 106 a; 2 Inst. 167.
(*b*) 1 Bl. Comm. 290.
(*c*) *R.* v. *Forty-nine Casks of Brandy*, 3 Hagg. Ad. 277.
(*d*) *Sir R. Constable's Case*, 5 Co. Rep. 106 a; St. of Westminster, I. c. 4; *The Augusta*, 1 Hagg. Ad. 18. See Colquhoun's Summary of Roman Civil Law, vol. ii. § 978.
(*e*) *R.* v. *Two Casks of Tallow*, 3 Hagg. Ad. 298.
(*f*) *Palmer* v. *Rouse*, 3 H. & N. 509.
(*g*) *R.* v. *Property derelict*, 1 Hagg. Ad. 383.
(*h*) Roll. Rep. 285, pl. 1; 6 Vin. Ab. 526; *The Helen*, 1 Hagg. Ad. 144; *The Panda*, 1 W. Rob. 423.

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Duty of receiver when any ship is stranded or in distress.

441. Whenever any ship or boat is stranded or in distress at any place on the shore of the sea or of any tidal water within the limits of the United Kingdom, the receiver of the district within which such place is situate shall, upon being made acquainted with such accident, forthwith proceed to such place, and upon his arrival there he shall take the command of all persons present, and assign such duties to each person, and issue such directions, as he may think fit with a view to the preservation of such ship or boat, and the lives of the persons belonging thereto, and the cargo and apparel thereof; and if any person wilfully disobeys such directions, he shall forfeit a sum not exceeding 50*l.*; but it shall not be lawful for such receiver to interfere between the master of such ship or boat and his crew in matters relating to the management thereof, unless he is requested so to do by such master.

Powers of receiver in case of such accident to any ship or boat.

442. The receiver may, with a view to such preservation as aforesaid of the ship or boat, persons, cargo, and apparel, do the following things; (that is to say,)

(1.) Summon such number of men as he thinks necessary to assist him:

(2.) Require the master or other person having the charge of any ship or boat near at hand to give such aid with his men, ship, or boats as may be in his power:

(3.) Demand the use of any waggon, cart, or horses that may be near at hand:

And any person refusing without reasonable cause to comply with any summons, requisition, or demand so made as aforesaid, shall for every such refusal incur a penalty not exceeding 100*l.*; but no person shall be liable to pay any duty of assessed taxes in respect of any such waggon, cart, or horses by reason of the user of the same under this section.

All articles washed on shore, or lost, or taken from any ship or boat, to be delivered to the receiver.

443. All cargo and other articles belonging to such ship or boat as aforesaid that may be washed on shore, or otherwise be lost or taken from such ship or boat, shall be delivered to the receiver; and any person, whether he is the owner or not, who secretes or keeps possession of any such cargo or article, or refuses to deliver the same to the receiver or to any person authorised by him to demand the same, shall incur a penalty not exceeding 100*l.*; and it shall be lawful for such receiver or other person as aforesaid to take such cargo or article by force from the person so refusing to deliver the same.

444. Whenever any such accident as aforesaid occurs to any ship or boat, and any person plunders, creates disorder, or obstructs the preservation of such ship, boat, lives, or cargo as aforesaid, it shall be lawful for the receiver to cause such person to be apprehended, and to use force for the suppression of any such plundering, disorder, or obstruction as aforesaid, with power to command all Her Majesty's subjects to assist him in the use of such force; and if any person is killed, maimed, or hurt by reason of his resisting the receiver in the execution of the duties hereby committed to him, or any person acting under his orders, such receiver or other person shall be free and fully indemnified as well against the Queen's Majesty, her heirs and successors, as against all persons so killed, maimed, or hurt.

Power of receiver to suppress plunder and disorder by force.

445. During the absence of the receiver from the place where any such accident as aforesaid occurs, or in places where no receiver has been appointed under this Act, the following officers in succession, each in the absence of the other, in the order in which they are named, that is to say, any principal officer of customs or of the coast guard, or officer of inland revenue, and also any sheriff, justice of the peace, commissioned officer on full pay in the naval service of Her Majesty, or commissioned officer on full pay in the military service of Her Majesty, may do all matters and things hereby authorised to be done by the receiver, with this exception, that with respect to any goods or articles belonging to any such ship or boat, the delivery up of which to the receiver is hereinbefore required, any officer so acting shall be considered as the agent of the receiver, and shall place the same in the custody of the receiver; and no person so acting as substitute for any receiver shall be entitled to any fees payable to receivers, or be deprived by reason of his so acting of any right to salvage to which he would otherwise be entitled.

Certain officers to exercise powers of receiver in his absence.

Except as provided by this section, no one may interfere with wreck; even the owner himself must give notice to the Receiver stating that he has found it (see sec. 450, p. 373).

446. Whenever any such accident as aforesaid occurs to any ship or boat, all persons may, for the purpose of rendering assistance to such ship or boat, or saving the lives of the persons on board the same, or the cargo or apparel thereof, unless there is some public road equally convenient, pass and

Power in case of a ship being in distress to pass over adjoining lands with carriages.

§§ 446-448.

repass either with or without carriages or horses over any adjoining lands, without being subject to interruption by the owner or occupier, so that they do as little damage as possible, and may also, on the like condition, deposit on such lands any cargo or other article recovered from such ship or boat; and all damage that may be sustained by any owner or occupier in consequence of any such passing or repassing or deposit as aforesaid shall be a charge on the ship, boat, cargo, or articles in respect of or by which such damage was occasioned, and shall, in default of payment, be recoverable in the same manner as salvage is hereby made recoverable; and the amount payable in respect thereof, if disputed, shall be determined in the same manner as the amount of salvage is hereby in case of dispute directed to be determined.

As to the mode of recovering salvage, see sec. 460 *et seq.*, p. 383.

Penalty on owners and occupiers of land refusing to allow carriages, &c., to pass over their land.

447. If the owner or occupier of any land over which any person is hereby authorised to pass or repass for any of the purposes hereinbefore mentioned does any of the following things; (that is to say),

(1.) Impedes or hinders any such person from so passing or repassing, with or without carriages, horses, and servants, by locking his gates, refusing, upon request, to open the same, or otherwise however;

(2.) Impedes or hinders the deposit of any cargo or other article recovered from any such ship or boat, as hereinbefore mentioned;

(3.) Prevents such cargo or other article from remaining so deposited for a reasonable time, until the same can be removed to a safe place of public deposit;

He shall for every such offence incur a penalty not exceeding 100*l.*

Power of receiver to institute examination with respect to ships in distress.

448. Any receiver, or in his absence any justice of the peace, shall, as soon as conveniently may be, examine upon oath (which oath they are hereby respectively empowered to administer) any person belonging to any ship which may be or may have been in distress on the coasts of the United Kingdom, or any other person who may be able to give any account thereof or of the cargo or stores thereof, as to the following matters; (that is to say),

(1.) The name and description of the ship;
(2.) The name of the master and of the owners;
(3.) The names of the owners of the cargo; — Owners of cargo.
(4.) The ports or places from and to which the ship was bound; — Port.
(5.) The occasion of the distress of the ship; — Cause.
(6.) The services rendered; — Services.
(7.) Such other matters or circumstances relating to such ship, or to the cargo on board the same, as the receiver or justice thinks necessary: — Other matters.

And such receiver or justice shall take the examination down in writing, and shall make two copies of the same, of which he shall send one to the Board of Trade, and the other to the secretary of the committee for managing the affairs of Lloyd's in London, and such last-mentioned copy shall be placed by the said secretary in some conspicuous situation for the inspection of persons desirous of examining the same; and for the purposes of such examination every such receiver or justice as aforesaid shall have all the powers given by the first part of this Act to inspectors appointed by the Board of Trade. — Examination in writing.

As to the powers of such inspectors, see sec. 15, p. 12.

39 & 40 Vict. c. 80, s. 31.—A wreck commissioner may at the request of the Board of Trade, by himself, or by some deputy approved by the Board of Trade, institute the same examination as a receiver of wreck under section four hundred and forty-eight of the Merchant Shipping Act, 1854, and shall for that purpose have the powers by that section conferred on a receiver of wreck. — Power for wreck commissioner to institute examination with respect to ships in distress under sec. 448.

A receiver of wreck in taking depositions under this section, should put down the facts deposed to as given by the deponent, and should not correct any statement made by the deponent which, within the personal knowledge of the receiver, is erroneous (*i*). — Mode of taking depositions.

449. *Repealed by* 39 & 40 Vict. c. 80, s. 45.

450. The following rules shall be observed by any person finding or taking possession of wreck within the United Kingdom; (that is to say,) — Rules to be observed by persons finding wreck.

(1.) If the person so finding or taking possession of the same is the owner, he shall as soon as possible give

(*i*) *The Lancashire*, 29 L. T. N. S. 927.

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notice to the receiver of the district within which such wreck is found, stating that he has so found or taken possession of the same; and he shall describe in such notice the marks by which such wreck is distinguished:

(2.) If any person not being the owner finds or takes possession of any wreck, he shall as soon as possible deliver the same to such receiver as aforesaid:

Penalties for default.

And any person making default in obeying the provisions of this section shall incur the following penalties; (that is to say,)

(3.) If he is the owner and makes default in performing the several things, the performance of which is hereby imposed on an owner, he shall incur a penalty not exceeding 100*l.*

(4.) If he is not the owner and makes default in performing the several things, the performance of which is hereby imposed on any person not being an owner,

He shall forfeit all claim to salvage;

He shall pay to the owner of such wreck, if the same is claimed, but if the same is unclaimed then to the person entitled to such unclaimed wreck, double the value of such wreck (such value to be recovered in the same way as a penalty of like amount); and

He shall incur a penalty not exceeding 100*l.*

It has been held that this section was not intended to apply to salvors who have found a derelict vessel and restored it to the owners. This is a criminal clause, and is meant to apply to a criminal and improper detention for the purpose of fraud. Where a barge was found adrift in the Thames, with no one on board, and was restored to the owners instead of being delivered to the receiver of wreck, sec. 450 was held not to apply or to operate as a forfeiture of any claim to salvage (*k*).

Power of receivers to seize concealed wreck.

451. If any receiver suspects or receives information that any wreck is secreted, or in the possession of some person who is not the owner thereof, or otherwise improperly dealt with, he may apply to any justice of the peace for a warrant, and such justice shall have power to grant a warrant, by virtue whereof it shall be lawful for the receiver to enter into any house or other place wherever situate, and also into any ship or

(*k*) *The Zeta*, L. R. 4 A. & E. 460; 3 Asp. Mar. Law Cas. 73.

boat, and to search for, and to seize and detain any such wreck as aforesaid there found; and if any such seizure is made in consequence of information that may have been given by any person to the receiver, the informer shall be entitled by way of salvage to such sum not exceeding in any case 5*l.* as the receiver may allow.

Notice of wreck to be given by receiver.

452. Every receiver shall within forty-eight hours after taking possession of any wreck cause to be posted up in the custom house of the port nearest to the place where such wreck was found or seized a description of the same and of any marks by which it is distinguished, and shall also, if the value of such wreck exceeds 20*l.*, but not otherwise, transmit a similar description to the secretary of the committee of Lloyd's aforesaid; and such secretary shall post up the description so sent, or a copy thereof, in some conspicuous place, for the inspection of all persons desirous of examining the same.

Goods deemed perishable or of small value may be sold immediately.

453. In cases where any wreck in the custody of any receiver is under the value of 5*l.*, or is of so perishable a nature or so much damaged that the same cannot, in his opinion, be advantageously kept, or if the value thereof is not sufficient to defray the charge of warehousing, the receiver may sell the same before the expiration of the period hereinafter mentioned, and the money raised by such sale, after defraying the expenses thereof, shall be held by the receiver for the same purposes and subject to the same claims for and to which the article sold would have been held and liable if it had remained unsold.

In cases where any lord of the manor or other person is entitled to unclaimed wreck, receiver to give notice to him.

454. In cases where any admiral, vice-admiral, lord of the manor, or other person is entitled for his own use to unclaimed wreck found on any place situate within a district for which a receiver is appointed, such admiral, vice-admiral, lord of the manor, or other person, shall deliver to such receiver a statement containing the particulars of his title, and the address to which notices are to be sent; and upon such statement being so delivered, and proof made to the satisfaction of the receiver of the validity of such title, it shall be his duty, whenever he takes possession of any wreck found at any such place, to send within forty-eight hours thereafter a description of the same and of any marks by which it is distinguished, directed to such address as aforesaid.

§§ 454, 455.

Grants to Manors.

Grants from the Crown to be construed strictly against grantee.

Space between high and low water mark.

Priority of seizure.

The general right of the Crown to wreck of the sea (see sec. 439, p. 369), has been sometimes granted to lords of the manor and others. Such a grant being from the Crown, must be construed strictly against the grantee, because the prerogatives, rights, and emoluments of the Crown being conferred upon it for great purposes and for the public use, are not to be diminished by any grant beyond what such grant, by necessary and unavoidable construction, shall take away (*l*). Such a grant will confer on the grantee rights from the high water mark and above it. Between high and low water mark, there is a *divisum imperium;* when the tide covers this space, it is sea, and subject to the Admiralty; when the tide recedes, it is land, and within the manor (*m*). Priority of seizure is a fact of no importance in determining whether property is wreck of the sea or an Admiralty droit (*n*). As regards Scotland, the term "lord of the manor," when used in this part of the Act, is to include "heritable proprietor duly infeft" (see sec. 501. p. 416).

Payments to be made to receiver.

455. There shall be paid to all receivers appointed under this Act the expenses properly incurred by them in the performance of their duties, and also in respect of the several matters specified in the table marked V. in the schedule thereto, such fees, not exceeding the amounts therein mentioned, as may from time to time be directed by the Board of Trade; and the receiver shall have the same lien and be entitled to the same remedies for the recovery of such expenses and fees as a salvor has or is entitled to in respect of salvage due to him; but, save as aforesaid, no receiver appointed under this Act shall, as such, be entitled to any remuneration whatsoever.

TABLE V.

FEES AND REMUNERATION OF RECEIVERS.

	£	s.	d.
For every examination on oath instituted by a receiver with respect to any ship or boat which may be or may have been in distress, a fee not exceeding	1	0	0
But so that in no case shall a larger fee than 2*l.* be charged for examinations taken in respect of the same ship and the same occurrence, whatever may be the number of the deponents.			
For every report required to be sent by the receiver to the secretary of the committee for managing the affairs of Lloyd's in London, the sum of	0	10	0

(*l*) *The Rebecca*, 1 C. Rob. 230; *R.* v. *Forty-nine Casks of Brandy*, 3 Hagg. Ad. 271; 2 Bl. Comm. 347.
(*m*) *R.* v. *Two Casks of Tallow*, 3 Hagg. Ad. 298.
(*n*) *The Pauline*, 2 W. Rob. 360.

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For wreck taken by the receiver into his custody, a per-centage of five per cent. upon the value thereof,

But so that in no case shall the whole amount of per-centage so payable exceed 20*l.*

In cases where any services are rendered by a receiver, in respect of any ship or boat in distress, not being wreck, or in respect of the cargo or other articles belonging thereto, the following fees instead of a per-centage; that is to say,

If such ship or boat with her cargo equals or exceeds in value 600*l.*, the sum of 2*l.* for the first, and the sum of 1*l.* for every subsequent day during which the receiver is employed on such service, but if such ship or boat with her cargo is less in value than 600*l.*, one moiety of the above-mentioned sum.

For a salvor's lien see sec. 497, p. 413, and as to his remedies see sec. 468 *et seq.*, p. 394. Disputes as to amount are to be settled by the Board of Trade (see sec. 456, p. 378).

Payment of receivers appointed by Receiver General.

17 & 18 Vict. c. 120, s. 12.—There shall be payable to such receivers, serjeants, deputies, and other officers (*o*) as aforesaid such fees and other remuneration as are by the said Merchant Shipping Act, 1854, made payable to receivers appointed thereunder, and payment thereof shall be made by the same persons and in the same manner, and shall be capable of being enforced by the same means, as payment of the fees or other remuneration payable to the receivers appointed under "The Merchant Shipping Act, 1854," are payable or capable of being enforced, or as near thereto as circumstances permit; and, save as aforesaid, and saving also any expenses actually and properly incurred, no such receiver, serjeant, deputy, or other officer as aforesaid shall be entitled to demand or receive from any person any fees or other sums in respect of any services performed by him as receiver.

Application of fees of such receivers.

17 & 18 Vict. c. 120, s. 13.—All fees or other remuneration received by any such receiver, serjeant, deputy, or other officer as aforesaid may be applied by him to his own use.

This only applies to Cinque Port officers; see sec. 439, p. 368. The usual fees received by a receiver appointed under the Principal Act go to the Mercantile Marine Fund (see sec. 457, p. 378).

Remuneration for services by coastguard.

18 & 19 Vict. c. 91, s. 20.—In cases where services are rendered by officers or men of the coastguard service in watching or protecting shipwrecked property, then, unless it can be shown that such services have been declined by the owner of such

(*o*) See 17 & 18 Vict. c. 120, s. 11. Under s. 439, p. 368; the serjeants, &c., here alluded to are Cinque Ports officers.

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property or his agent at the time they were tendered, or that salvage has been claimed and awarded for such services, the owner of the shipwrecked property shall pay in respect of the said services remuneration according to a scale to be fixed by the Board of Trade, so, however, that such scale shall not exceed any scale by which payment to officers and men of the coastguard for extra duties in the ordinary service of the Commissioners of Customs is for the time being regulated; and such remuneration shall be recoverable by the same means and shall be paid to the same persons, and accounted for and applied in the same manner as fees received by receivers appointed under the Merchant Shipping Act, 1854.

Although it is part of the duty of coastguard men to save life, it is a duty for which they should be paid (*p*), but not every assistance rendered to vessels in distress will entitle them to salvage (*q*).

Disputes as to sums payable to receiver to be determined by Board of Trade.

456. Whenever any dispute arises in any part of the United Kingdom as to the amount payable to any receiver in respect of expenses or fees, such dispute shall be determined by the Board of Trade, whose decision shall be final.

Application of fees.

457. All fees received by any receiver appointed under this Act, in respect of any services performed by him as receiver, shall be carried to and form part of the Mercantile Marine Fund, and a separate account thereof shall be kept, and the moneys arising therefrom shall be applied in defraying any expenses duly incurred in carrying into effect the purposes of the Eighth Part of this Act, in such manner as the Board of Trade directs.

Salvage in the United Kingdom.

Salvage in respect of services rendered in the United Kingdom.

458. In the following cases (that is to say),

Whenever any ship or boat is stranded or otherwise in distress on the shore of any sea or tidal water situate within the limits of the United Kingdom, and services are rendered by any person,

(1.) In assisting such ship or boat;

(2.) In saving the lives of the persons belonging to such ship or boat;

(3.) In saving the cargo or apparel of such ship or boat, or any portion thereof;

(*p*) *The Silver Bullion*, 2 Spinks, E. & A. 70.
(*q*) *The Amazon*, 2 L. T. N. S. 140; *The Queen Mab*, 3 Hagg. Ad. 243.

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And whenever any wreck is saved by any person other than a receiver within the United Kingdom;

There shall be payable by the owners of such ship or boat, cargo, apparel, or wreck, to the person by whom such services or any of them are rendered or by whom such wreck is saved, a reasonable amount of salvage, together with all expenses properly incurred by him in the performance of such services or the saving of such wreck, the amount of such salvage and expenses (which expenses are hereinafter included under the term salvage) to be determined in case of dispute in manner hereinafter mentioned.

Extending 17 & 18 Vict. c. 104, as to claims for salvage of life.

24 Vict. c. 10, s. 9.—All the provisions of "The Merchant Shipping Act, 1854," in regard to salvage of life from any ship or boat within the limits of the United Kingdom, shall be extended to the salvage of life from any British ship or boat, wheresoever the services may have been rendered, and from any foreign ship or boat, where the services have been rendered either wholly or in part in British waters.

Provisions concerning salvage of life may, with the consent of any foreign country, be applied to its ships on the high seas.

25 & 26 Vict. c. 63, s. 59.—Whenever it is made to appear to Her Majesty that the Government of any foreign country is willing that salvage shall be awarded by British Courts for services rendered in saving life from any ship belonging to such country when such ship is beyond the limits of British jurisdiction, Her Majesty may, by Order in Council, direct that the provisions of the Principal Act and of this Act, with respect to salvage for services rendered in saving life from British ships, shall in all British Courts be held to apply to services rendered in saving life from the ships of such foreign country, whether such services are rendered within British jurisdiction or not.

Salvage.

Meaning of salvage.

Salvage in its simple character is the service which those who recover property from loss or damage at sea, render to the owners, with the responsibility of making restitution, and with a lien for their reward (*r*). The word is generally used to mean the reward itself to which such persons become entitled. The ingredients of a salvage service are:—

Ingredients of a salvage service.

(1.) Enterprise and promptitude in the salvors in rendering assistance (*s*).

(2.) The degree of danger and distress from which the property is rescued (*t*).

(3.) The degree of labour and skill displayed, and the danger incurred by the salvors (*u*).

(*r*) H.M.S. *The Thetis*, 3 Hagg. Ad. 48.
(*s*) *The City of Edinburgh*, 2 Hagg. Ad. 334.
(*t*) *The Clifton*, 3 Hagg. Ad. 120; *The Charlotte*, 3 W. Rob. 68.
(*u*) *The Two Friends*, 2 W. Rob. 353.

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(4.) The value of the property salved (*x*).
(5.) The time employed in rendering the services (*y*).
(6.) The success of the efforts to save the property (*z*).

The amount of salvage, or whether any be due, will depend upon the existence, in a greater or less proportion, of these elements. There must be some peril which exposes the property to destruction unless assistance is rendered. But if the master can by a proper use of the means he possesses save the property, the law presumes that he will, and that the salvor's interference was unnecessary (*a*).

Enterprise and promptitude.

(1.) There is a broad distinction between salvors who volunteer to go out, and salvors who are employed by a ship in distress. The former go out at their own risk, and the effectual performance of salvage service is that which gives them a title to salvage remuneration. But if they are engaged by a ship in distress, they are to be paid according to the efforts made, even though their services may not prove beneficial to the vessel (*b*). There must, however, be some service actually rendered by the persons claiming the reward (*c*).

General interests of navigation considered.

In awarding salvage the Court will look not merely to the exact *quantum* of service performed in the case itself, but to the general interests of navigation and commerce, which are greatly protected by exertions of this nature. The fatigue, the anxiety, the determination to encounter danger if necessary, the spirit of adventure, the skill and dexterity which are acquired by the exercise of that spirit, all require to be taken into consideration (*d*).

Danger of vessel salved.

(2.) "It is not necessary," says Dr. Lushington, "that the distress should be actual or immediate, or that the danger should be imminent and absolute; it will be sufficient if at the time the assistance is rendered, the vessel has encountered any damage or misfortune, which might possibly expose her to destruction if the services were not rendered" (*e*).

Must have been some danger.

If, however, there was no risk or danger at all, no salvage will be awarded, even though the alleged salvor towed the vessel into port under the mistaken impression that she was in distress (*f*).

Transhipment.

The Court looks with jealousy on salvage by transhipment, as leading to deception on owners and underwriters (*g*), and mere transhipment, unless the cargo was in danger, is not a salvage service at all (*h*).

Fire.

Salvage was awarded to a steamer for towing away a vessel that was lying in a dock, and in danger of catching fire from the surrounding warehouses,

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(*x*) *The Ewell Grove*, 3 Hagg. Ad. 221; *The Blendenhall*, 1 Dods. Ad. 423.
(*y*) *The Industry*, 3 Hagg. Ad. 204.
(*z*) *The India*, 1 W. Rob. 406.
(*a*) Parsons on Shipping, (2nd ed.) II. 282; *The Himalaya*, Swa. 515: *Hand* v. *The Elvira*, Gilpin (Amer. Rep.), 60.
(*b*) *The Undaunted*, Lush. 92.
(*c*) *The Ranger*, 3 Notes of Cases, 590; *The Dodge Healy*, 4 Wash. (Amer. Rep.), 651; *The Aquila*, 1 C. Rob. 37.
(*d*) *The William Beckford*, 3 C. Rob. 355; *The Hector*, 3 Hagg. Ad. 95; *Mason* v. *The Blaireau*, 2 Cranch (Amer. Rep.), 266.
(*e*) *The Charlotte*, 3 W. Rob. 71; *The Astecs*, 3 Mar. Law Cas. 326; 21 L. T. N. S. 797.
(*f*) *The Union*, 3 Jur. N. S. 462; *The Strathnaver*, 1 App. Cas. 58; *The Rebecca Clyde*, 5 Benedict (Amer. Rep.), 98.
(*g*) *The Hope*, 3 Hagg. Ad. 424.
(*h*) *The Westminster*, 1 W. Rob. 231.

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which were in flames (*i*); it has also been earned by assisting to extinguish a fire on board a ship (*k*).

Danger to salvors.

(3.) Though a salvage service be not long nor in itself very successful in the issue, yet if the salvors render all the assistance their means will allow, with risk and danger to themselves, they are entitled to salvage remuneration (*l*). In considering these cases, the primary object is the danger to the property salved, the secondary object the risk to the salvors (*m*). Danger to life incurred by salvors increases the amount of their reward (*n*), and all risk incurred by them, entitles them to a higher remuneration than they would otherwise obtain; but risk is not a necessary element in salvage (*o*). Thus, persons who communicate with a vessel in distress, and procure assistance for her, are considered salvors (*p*); and in an American case, where the master, owner, and most of the crew left the vessel because she was imbedded in a gorge of ice, and a passenger undertook to command her, he was held entitled to salvage, although the vessel was finally saved by the providential breaking up of the ice, and without any direct exertions on his part (*q*).

Risk of life.

Procuring assistance and willingness to encounter risk.

If a disabled vessel is brought into a place of safety while a storm is impending, but before there has been any actual danger, the salvors will earn their reward although they ran no risk, if they can show that the vessel would have been exposed to the storm, and have been in danger, but for their assistance (*r*). Where the ship saved is derelict, it is usual for the Court to award more than in ordinary salvage cases (*s*). (As to Derelict, see sec. 467, p. 391 (*t*).)

Value of property salved.

(4.) The value of the property saved is to be considered in awarding the *quantum* of salvage (*u*); but there is no rule entitling salvors to any fixed proportion of this value (*x*); and the amount awarded, where the value is very great, must not be altogether out of proportion to the services actually rendered (*y*) (see sec. 460, p. 384). The value of the property is to be estimated at the time when the vessel

When to be estimated.

(*i*) *The Tees, The Pentucket*, Lush. 505.

(*k*) *The Rosalie*, 1 Spinks, E. & A. 188; *Harford* v. *Jones*, 1 Ld. Raym. 393.

(*l*) *The Santipore*, 1 Spinks, E. & A. 234.

(*m*) *The Travellers*, 3 Hagg. Ad. 371; *The London Merchant*, 3 Hagg. Ad. 394.

(*n*) *The Ebenezer*, 8 Jur. 386.

(*o*) *The Pericles*, B. & L. 80.

(*p*) *The Ocean*, 2 W. Rob. 91; *The Carrier Pigeon*, 4 Irish Jur. N. S. 99.

(*q*) *The Pontiac*, 1 Newberry (Amer. Rep.), 130. See Jones on Salvage, 8.

(*r*) Parsons on Shipping (ed. 1869) II. 205; *The Lockwoods*, 9 Jur. 1017; *The Emulous*, 1 Sumner (Amer. Rep.), 216.

(*s*) Jones on Salvage, 87.

(*t*) *The Inca*, 12 Moo. P. C. 189.

(*u*) *The Raikes*, 1 Hagg. Ad. 246.

(*x*) H.M.S. *The Thetis*, 3 Hagg. Ad. 48; *The Salacia*, 2 Hagg. Ad. 262.

(*y*) *Compagnie Générale Transatlantique* v. *Owners of the Spray, &c.*; *The Amérique*, L. R. 6 P. C. 468, in which case the Privy Council reduced the amount awarded in the Admiralty Court by two-thirds.

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is first brought into port (*z*); all necessary expenses, and the usual allowances in respect of cargo and freight being deducted from the gross value (*a*).

Length of services.

(5). When salvage services have occupied some time in being performed, and the vessel that renders them has been damaged, the Court will allow a reasonable compensation to such vessel for its loss of time and for repairs, over and above what is given specially as salvage (*b*) (see sec. 498, p. 413).

Success of efforts.

(6.) A mere attempt to save a vessel and cargo, however meritorious that attempt may be, or whatever degree of risk or danger may have been incurred, if unsuccessful, can never furnish any title to salvage (*c*). But where a vessel is finally saved, those who meritoriously contribute to that result are entitled to a share in the reward, although the part they took, standing by itself, would not have produced it (*d*).

Salvors specially engaged.

If, however, the salvors are specially engaged by a vessel, and perform their engagement as far as possible, they will become entitled to salvage (*e*) (as to agreements with salvors, see sec. 460, p. 385).

Collisions.

When two vessels come into collision, they are bound to assist each other if necessary (*f*), and if the vessel in fault assists the other, she will be entitled to no salvage either from the injured vessel or her cargo (*g*). (As to towage, see sec. 460, p. 385.)

Salvage for life may be paid by Board of Trade out of Mercantile Marine Fund.

459. Salvage in respect of the preservation of the life or lives of any person or persons belonging to any such ship or boat as aforesaid shall be payable by the owners of the ship or boat in priority to all other claims for salvage; and in cases where such ship or boat is destroyed, or where the value thereof is insufficient, after payment of the actual expenses incurred, to pay the amount of salvage due in respect of any life or lives, the Board of Trade may in its discretion award to the salvors of such life or lives out of the Mercantile Marine Fund such sum or sums as it deems fit, in whole or part satisfaction of any amount of salvage so left unpaid in respect of such life or lives.

In this section the words "the lives of the persons belonging to such ship or boat" include passengers who may be on board (*h*). The inten-

(*z*) Jones on Salvage, 90; *The Loodiandh*, Pritchard's Admiralty Digest (2nd ed.), II. 793; *The Stella*, L. R. 1 A. & E. 340.

(*a*) *The Peace*, Swa. 115; *The Paul*, L. R. 1 A. & E. 57; *The Watt*, 2 W. Rob. 71.

(*b*) *The Spirit of the Age*, Swa. 286; *The Saratoga*, Lush. 318.

(*c*) *The Zephyrus*, 1 W. Rob. 330.

(*d*) *The Atlas*, Lush. (P. C.) 527; *The Henry Ewbank*, 1 Sumner (Amer. Rep.), 421.

(*e*) *The Undaunted*, Lush. 90.

(*f*) See 36 & 37 Vict. c. 85, s. 16, under s. 300, p. 280.

(*g*) *Cargo ex Capella*, L. R. 1 A. & E. 356; *The Glengaber*, 1 Asp. Mar. Law Cas. 401.

(*h*) *The Fusilier*, 34 L. J. (Ad.) 25.

tion of the section is to provide for the contingency of life saved and property lost, as before this enactment no reward could be given for the saving of life alone (*i*). When both life and property are saved, the ship and cargo contribute according to their rateable values, but the cargo may be made to contribute when life alone has been saved (*k*).

Disputes as to Salvage.

460. Disputes with respect to salvage arising within the boundaries of the Cinque Ports shall be determined in the manner in which the same have hitherto been determined; but whenever any dispute arises elsewhere in the United Kingdom between the owners of any such ship, boat, cargo, apparel, or wreck, as aforesaid, and the salvors, as to the amount of salvage, and the parties to the dispute cannot agree as to the settlement thereof by arbitration or otherwise,

Disputes as to salvage how to be settled.

Then if the sum claimed does not exceed 200*l.*,

If sum claimed does not exceed 200*l.*

Such dispute shall be referred to the arbitration of any two justices of the peace resident as follows; (that is to say,)

In case of wreck, resident at or near the place where such wreck is found:

In case of services rendered to any ship or boat, or to the persons, cargo, or apparel belonging thereto, resident at or near the place where such ship or boat is lying, or at or near the first port or place in the United Kingdom into which such ship or boat is brought after the occurrence of the accident by reason whereof the claim to salvage arises:

But if the sum claimed exceeds 200*l.*,

If sum claimed exceeds 200*l.*

Such dispute may, with the consent of the parties, be referred to the arbitration of such justices as aforesaid, but if they do not consent shall in England be decided by the High Court of Admiralty of England, in Ireland by the High Court of Admiralty of Ireland, and in Scotland by the Court of Session; subject to this proviso, that if the claimants in such dispute do not recover in such Court of Admiralty or Court of Session a greater sum than 200*l.*, they shall not, unless the court certifies that the case is a fit one to be tried in a superior court,

(*i*) *The Coromandel*, Swa. 207.
(*k*) *The Fusilier*, 34 L. J. (Ad.) 25; *The Bartley*, Swa. 199.

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recover any costs, charges, or expenses incurred by them in the prosecution of their claim :

And every dispute with respect to salvage may be heard and adjudicated upon on the application either of the salvor or of the owner of the property salved, or of their respective agents.

The "sum claimed" here means a claim made before any legal proceedings have been commenced (*l*).

Receiver may appoint a valuer in salvage case.

25 & 26 Vict. c. 63, s. 50.—Whenever any salvage question arises the receiver of wreck for the district may, upon application from either of the parties, appoint a valuer to value the property in respect of which the salvage claim is made, and shall, when the valuation has been returned to him, give a copy of the valuation to both parties; and any copy of such valuation, purporting to be signed by the valuer, and to be attested by the receiver, shall be received in evidence in any subsequent proceeding; and there shall be paid in respect of such valuation, by the party applying for the same, such fee as the Board of Trade may direct.

Amount of Salvage.

Salvage a reward for courage and enterprise.

Salvage is not a mere payment for work and labour. It is an additional reward for enterprise, skill, and courage; it is given to develop and encourage those qualities, and thus to assist and protect maritime commerce.

No similar reward on land.

No similar reward is given for the rescue of property on land.

No fixed rule as to amount.

There is no fixed rule as to what sum of money shall be awarded, but the Court has an entire discretion to give what sum it thinks proper under the circumstances of each case (*m*). Besides, it is hardly possible to make a precedent of any one case in deciding another, when the question is one merely of money compensation, so infinitely various are the shades of difference in the details of each case (*n*). In cases of derelict, the old rule used to be that half the value of the ship should be given, but this has now been declared obsolete, though still sometimes followed (*o*).

Life salvage.

The saving of life entitles the salvor to a higher reward than if he had only saved property (*p*), especially if the vessel in danger is one carrying passengers (*q*).

Loss of profit.

If the salvor's vessel is, at the time of rendering the assistance, engaged in some lucrative employment, the loss the owner may have sustained is an essential ingredient in estimating the reward, but the vessel

(*l*) *The William and John*, Br. & L. 49; 1 Mar. Law Cas. 311.

(*m*) H.M.S. *The Thetis*, 3 Hagg. Ad. 62; *The Adventure*, 8 Cranch (Amer. Rep.), 221; *Bond* v. *Brig Cora*, 2 Wash. C. C. (Amer. Rep.) 80.

(*n*) *The Gennessee*, Pritchard's Digest (2nd ed.), II. 829, and for instances of salvage awards, see *ib.* II. 839.

(*o*) *The Aquila*, 1 C. Rob. 42; *The Rasche*, L. R. 4 A. & E. 127.

(*p*) *The Thomas Fielden*, 32 L. J. Ad. 61; *The Emblem*, Daveis (Amer. Rep.) 61.

(*q*) *The Ardincaple*, 3 Hagg. 151; *The London Merchant*, ib. 394; *Cargo ex Woosung*, 33 L. T. N. S. 394; 3 Asp. Mar. Law Cas. 50.

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must be actually engaged in the employment at the time (*r*). In short, in awarding the amount, the Court will consider all the ingredients of the service, and give compensation accordingly (see sec. 458, p. 379).

All circumstances considered.

Agreement as to Amount.

Salvors may agree for their reward.

Salvors are allowed to make an agreement with the master of the ship in distress, as to what sum shall be paid them for their services, and they are then bound as in all other cases of contract. There should, however, be a clear understanding of the nature of the agreement, that it is made with fairness and impartiality to all concerned, and that the parties to it are competent to form a judgment as to the obligations to which they are binding themselves (*s*).

Agreement must be fair and clearly understood.

The condition of the vessel salved must be properly represented to the salvors at the time when the agreement is made, and if there has been any concealment, whether intentional or not, of facts that ought to have been known to the salvors, the agreement will not be upheld (*t*).

State of vessel properly represented.

In fixing the amount for their services, the salvors are only to look to the labour and danger they will probably undergo, and are not to speculate on the value of the cargo; a misrepresentation of the value will not invalidate the agreement (*u*), nor will subsequent unexpected bad weather entitle them to any extra remuneration (*x*).

Risk and labour only to be considered.

Fraud will, of course, vitiate the whole agreement, and the Admiralty Court will not allow a salvor to take advantage of his situation, and drive a hard bargain, by availing himself of the calamities of others (*y*).

Fraud renders void the agreement.

Salvage and Towage by Steamers.

Steamers liberally rewarded.

The Courts are disposed to reward steamers very liberally for salvage services, on account of the great facilities they possess for assisting vessels, and because of the cost entailed in fitting them out (*z*); and this is peculiarly the case when the steamer is specially built for and devoted to salvage services (*a*).

Towage.

Every act of assistance given by a steamer to another vessel is not necessarily a salvage service. Steamers are frequently employed to tow other vessels, and if the vessel towed have received no injury or damage, and is in no danger, mere towage is payable, the amount of which is generally agreed upon, or is fixed by some local scale (*b*). Circumstances

(*r*) *The Louisa*, 3 W. Rob. 99.

(*s*) *The True Blue*, 2 W. Rob. 176; *The Theodore*, Swa. 351; *The Westminster*, 1 W. Rob. 229; *The Waverley*, L. R. 3 A. & E. 369; *The James Armstrong*, 33 L. T. N. S. 390; L. R. 4 A. & E. 380; and see Williams & Bruce, Admiralty Practice (ed. 1868), 129.

(*t*) *The Canova*, L. R. 1 A. & E. 56.

(*u*) Jones on Salvage, 95; *The Henry*, 15 Jur. 183.

(*x*) *The Jonge Andries*, Swa. 226, 303; *The Waverley*, 1 Asp. Mar. Law Cas. 47.

(*y*) *The Generous*, L. R. 2 A. & E. 57; *The Crus V.*, Lush. 583; *The Westminster*, 1 W. Rob. 235; *The J. G. Paint*, 1 Benedict (Amer. Rep.), 545.

(*z*) *The Kingalock*, 1 Spinks, E. & A. 267; *The Raikes*, 1 Hagg. Ad. 246; *The London Merchant*, 3 Hagg. Ad. 401.

(*a*) *The Maryanne*, 9 (Irish) Jur. N. S. 60; *Virden* v. *Brig Caroline*, U. S. C. C., Delaware, 1857; 6 Amer. Law Reg. 222.

(*b*) *The Reward*, 1 W. Rob. 174; *The Strathnaver*, 1 App. Cas. 65.

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Towage may become salvage, and is not a warranty to tow to destination.

Obligation ended if rendered impossible by a vis major,

but not by difficulties.

may arise to convert a towage into a salvage service (*c*). "When a steamboat," said Lord Kingsdown (*d*), "engages to tow a vessel for a certain remuneration from one point to another, she does not warrant that she will be able to do so, and will do so under all circumstances, and at all hazards; but she does engage that she will use her best endeavours for that purpose, and will bring to the task competent skill, and such a crew, tackle, and equipments as are reasonably to be expected in a vessel of her class. She may be prevented from fulfilling her contract by a *vis major*, by accidents which were not contemplated, and which may render the fulfilment of her contract impossible, and in such a case, by the general rule of law, she is relieved from her obligations. But she does not become relieved from her obligations because unforeseen difficulties occur in the completion of her task; because the performance of her task is interrupted, or cannot be completed in the mode in which it was originally intended, as by the breaking of the ship's hawser. But if in the discharge of this task, by sudden violence of wind or waves, or other accidents, the ship in tow is placed in danger, and the towing vessel incurs risks, and performs duties which were not within the scope of her original engagement, she is entitled to additional remuneration for additional services if the ship be saved, and may claim as a salvor instead of being restricted to the sum stipulated to be paid for mere towage. In the cases on this subject, the towage contract is generally spoken of as superseded by the right to salvage." It is also laid down in the same case (*e*), that "If the danger from which the ship has been rescued is attributable to the fault of the tug; if the tug, whether by wilful misconduct or by negligence, or by the want of that reasonable skill or equipments which are implied in the towage contract, has occasioned or materially contributed to the danger, we can have no hesitation in stating our opinion that she can have no claim to salvage. She can never be permitted to profit by her own wrong or default. When it is remembered how much in all cases—how entirely in many cases—a ship in tow is at the mercy of the tug, how easily with the knowledge which the crews of such boats usually have of the waters on which they ply, they may place a ship in their charge in great, real, or apparent peril; how difficult of detection such a crime must be, and how strong the temptation to commit it, their lordships are of opinion that such cases require to be watched with the closest attention, and not without some degree of jealousy."

Towage superseded by salvage.

When danger arises from fault of tug.

Cannot profit by her own wrong.

Great risk of fraud.

Concealment of material facts.

If, when the towage contract is made, there is any concealment, even though unintentional, of material facts, such as the damaged condition of the tow, &c., the Court will not enforce the agreement (*f*).

The Cinque Ports and their Jurisdiction.

Section 460 does not affect salvage disputes in the Cinque Ports (*g*). These are still regulated by 1 & 2 Geo. 4, c. 76. By sec. 1 of that Act,

(*c*) *The Isabella*, 3 Hagg. Ad. 428; *The Princess Alice*, 3 W. Rob. 140; *The Rebecca Clyde*, 5 Benedict (Amer. Rep.) 98.
(*d*) *The Minehaha*, Lush. (P. C.) 347.
(*e*) *The Minehaha*, Lush. (P. C.) 348.
(*f*) *The Canova*, L. R. 1 A. & E. 56; *The Kingalock*, 1 Spinks, A. & E. 265; *The Jonge Andries*, Swa. 226, 303.
(*g*) *The Maria Luisa*, Swa. 67.

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The Lord Warden for the time being may nominate and appoint by an instrument or instruments under his hand and seal, three or more substantial persons in each of the Cinque Ports, two ancient towns, and their members, to adjust and determine any difference relative to salvage," of cables and anchors. "And the same shall be determined by any three or more of the said persons so to be appointed as aforesaid within the space of twenty-four hours after such difference shall be referred to them for their determination thereof, any usage or custom to the contrary in anywise notwithstanding; Provided always, that such commissioners shall immediately after their nomination proceed to elect some fit and proper person who shall be a notary or master extraordinary in Chancery, as their secretary or registrar, except to the port of Dover, where the registrar for the time being of the Court of Admiralty of the Cinque Ports shall be the registrar; and which secretary or registrar shall enter in a book to be kept for that purpose all the proceedings of such commissioners, and also a copy of the awards which they shall from time to time make; but such election of secretaries or registrars shall be subject to the approbation of the Lord Warden for the time being."

Lord Warden to appoint commissioners to determine disputes.

Commissioners to appoint a secretary.

By section 2, these commissioners may "decide on all claims and demands whatever, which shall be made by pilots, hovellers, boatmen, and other persons for services of any sort or description, rendered to any ship or vessel;" "or for saving and preserving any goods or merchandise, wrecked, stranded, or cast away from any ship, the master or owners thereof, or their agents, being present at the place where the commissioners shall be sitting." Within the jurisdiction of the Cinque Ports "the said commissioners shall have full power and authority to hear and determine on all cases whatever of services rendered by pilots, boatmen, and others to shipping within the jurisdiction aforesaid, whether such ships or vessels shall be in distress or not;" "they may examine the parties or their witnesses upon their oaths, which oaths shall and may be administered by the said secretary or registrar."

Commissioners may determine all claims by pilots, &c., within their jurisdiction.

By section 3, the commissioners are to be paid by the owners, &c., for their trouble, such fees as shall be adjudged to them in that behalf by the Lord Warden for the time being. No commissioner shall have power to act in any other port or place than that in which he is resident, or from which his usual place of residence is not distant more than one mile. They are also required to take an oath before acting in any case.

Commissioners to be paid certain fees, and only to act for their own place.

By section 4, parties who are dissatisfied may appeal to the High Court of Admiralty, or to the Admiralty Court of the Cinque Ports, by declaring to the commissioners within eight days after their award is made, and not afterwards, their wish to appeal, and they shall proceed within twenty days from the date of the award, by taking out a monition against the adverse party. The ship is to be liberated on bail being given in double the amount of the award.

Appeal to Admiralty Court of Cinque Ports.

By section 5, the appeal is to be conclusive.

Section 18, "The boundaries of the jurisdiction of the Lord Warden of the Cinque Ports in regard to any matter or thing contained in this Act, shall be and shall be deemed and taken to be as follows; (that is to say,) from a point to the westward of Seaford in the county of Sussex, called Red Cliff, including the same; thence passing in a line one mile without the sand or shoal called the House of Willingdon, and continuing the same distance without the ridge and new shoals; and thence in a

Boundaries of the Cinque Ports.

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line within five miles of Cape Grisney on the coast of France; thence round the shoal called the overfalls, two miles distant from the same; thence in a line without and the same distance along the eastern side of the Galloper sand, until the north end thereof bears west-north-west true bearing from the west-north-west bearing of the Galloper, it runs in a direct line across the shoal called the Thwart Middle, till it reaches the shore underneath the Maze Tower; from thence following in a line of the shore up to St. Orsyth in the county of Essex, and following the course of the shore up to the River Coln to the landing place nearest Brightlingsea; from thence in a direct line to Shoe Bacon; from thence to the point of Shellness on the Isle of Shippey; and from thence across the waters to Faversham; and from thence, following the line of coast round the North and South Forelands, and Beachy Head, till it reaches the said Red Cliff, including all the waters and havens comprehended between them." This description is not to enlarge or abridge the local limits of the ancient jurisdiction, but is to be applicable to the purposes of this Act only

Manner in which justices may decide disputes.

461. Whenever in pursuance of this Act any dispute as to salvage is referred to the arbitration of two justices they may either themselves determine the same, with power to call to their assistance any person conversant with maritime affairs as assessor, or they may, if a difference of opinion arises between them, or without such difference, if they think fit, appoint some person conversant with maritime affairs as umpire to decide the point in dispute; and such justices or their umpire shall make an award as to the amount of salvage payable within the following times; that is to say, the said justices within forty-eight hours after such dispute has been referred to them, and the said umpire within forty-eight hours after his appointment, with power nevertheless for such justices or umpire, by writing under their or his hands or hand, to extend the time within which they and he are hereby respectively directed to make their or his award.

Extension and amendment of summary jurisdiction in small salvage cases.

25 & 26 Vict. c. 63, s. 49.—The provisions contained in the Eighth Part of the principal Act for giving summary jurisdiction to two justices in salvage cases, and for preventing unnecessary appeals and litigation in such cases, shall be amended as follows; (that is to say,)

When property saved is worth less than 1000*l*.

(1.) Such provisions shall extend to all cases in which the value of the property saved does not exceed one thousand pounds, as well as to the cases provided for by the principal Act:

Wherever salvage is rendered.

(2.) Such provisions shall be held to apply whether the salvage service has been rendered within the limits of the United Kingdom or not:

(3.) It shall be lawful for one of Her Majesty's Principal Secretaries of State, or in Ireland for the Lord Lieutenant or other chief governor or governors, to appoint out of the justices for any borough or county a rota of justices by whom jurisdiction in salvage cases shall be exercised : Rota of justices.

(4.) When no such rota is appointed it shall be lawful for the salvors, by writing addressed to the justice's clerk, to name one justice, and for the owner of the property saved in like manner to name the other :

(5.) If either party fails to name a justice within a reasonable time the case may be tried by two or more justices at petty sessions : When no justice is named.

(6.) It shall be competent for any stipendiary magistrate, and also in England for any county court judge, in Scotland for the sheriff or sheriff substitute of any county, and in Ireland for the recorder of any borough in which there is a recorder, or for the chairman of quarter sessions in any county, to exercise the same jurisdiction in salvage cases as is given to two justices : Stipendiary magistrate, county court judge, &c., to have same jurisdiction.

(7.) It shall be lawful for one of Her Majesty's Principal Secretaries of State to determine a scale of costs to be awarded in salvage cases by any such justices or court as aforesaid : Scale of costs.

(8.) All the provisions of the principal Act relating to summary proceedings in salvage cases and to the prevention of unnecessary appeals in such cases shall, except so far as the same are altered by this Act, extend and apply to all such proceedings, whether under the principal Act or this Act, or both of such Acts. Summary salvage proceedings.

462. There shall be paid to every assessor and umpire who may be so appointed as aforesaid in respect of his services such sum not exceeding 5*l.*, as the Board of Trade may from time to time direct ; and all the costs of such arbitration, including any such payments as aforesaid, shall be paid by the parties to the dispute, in such manner and in such shares and proportions as the said justices or as the said umpire may direct by their or his award. Costs of arbitration.

463. The said justices or their umpire may call for the production of any documents in the possession or power of either party, which they or he may think necessary for determining the question in dispute, and may examine the parties or their Justices may call for documents, and administer oaths.

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witnesses on oath, and administer the oaths necessary for that purpose.

Appeal to courts of Admiralty.

464. If any person is aggrieved by the award made by such justices or such umpire as aforesaid, he may in England appeal to the High Court of Admiralty of England, in Ireland to the High Court of Admiralty of Ireland, and in Scotland to the Court of Session; but no such appeal shall be allowed unless the sum in dispute exceeds 50*l.*, nor unless within ten days after the date of the award the appellant gives notice to the justices to whom the matter was referred of his intention to appeal, nor unless the appellant proceeds to take out a monition, or to take such other proceeding as according to the practice of the court of appeal, is necessary for the institution of an appeal, within twenty days from the date of the award.

Sum in dispute.

The words "sum in dispute" must not be limited to the sum awarded by the justices (*h*); they refer to any specific sum that has in fact been demanded and refused as a remuneration for services rendered (*i*).

Appeals as to amount discouraged.

Appeals from justices are greatly discouraged by the Court, when the appeal is merely as to the amount awarded. To be successful, the appellant must show that the justices have grossly miscarried in their decision (*k*).

Justices to transmit copy of proceedings and certificate of value to Court of Appeal.

465. Whenever any appeal is made in manner herein-before provided the justices shall transmit to the proper officer of the Court of Appeal, a copy on unstamped paper certified under their hands to be a true copy of the proceedings had before such justices or their umpire, if any, and of the award so made by them or him, accompanied with their or his certificate in writing of the gross value of the article respecting which salvage is claimed; and such copy and certificate shall be admitted in the Court of Appeal as evidence in the cause.

Payment of salvage, to whom to be made in case of dispute as to apportionment.

466. Whenever the aggregate amount of salvage payable in respect of salvage services rendered in the United Kingdom has been finally ascertained either by agreement or by the award of such justices or their umpire, but a dispute arises as to the apportionment thereof amongst several claimants, then, if the amount does not exceed 200*l.* it shall be lawful for the party liable to pay the amount so due to apply to the receiver of the

(*h*) *The Andrew Wilson*, 1 Mar. Law Cas. 337.
(*i*) *The Mary Ann*, 2 Mar. Law Cas. 191.
(*k*) *The Cuba*, Lush. 14; *The Harriett*, Swa. 219; *The Strathnaver*, 1 App. Cas. 60.

district for liberty to pay the amount so ascertained to him; and he shall, if he thinks fit, receive the same accordingly, and grant a certificate under his hand, stating the fact of such payment and the services in respect of which it is made; and such certificate shall be a full discharge and indemnity to the person or persons to whom it is given, and to their ship, boats, cargo, apparel, and effects, against the claims of all persons whomsoever in respect of the services therein mentioned; but if the amount exceeds 200*l.*, it shall be apportioned in manner hereinafter mentioned.

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Apportionment of Salvage.

As to apportionment when the amount exceeds 200*l.*, or when the service is rendered abroad, and as to the proportions received by individuals, see sec. 498, p. 413.

467. Upon the receipt of any such amount as aforesaid, the receiver shall with all convenient speed proceed to distribute the same among the several persons entitled thereto, upon such evidence and in such shares and proportions as he thinks fit, with power to retain any monies that may appear to him to be payable to any absent parties; but any distribution made in pursuance of this section shall be final and conclusive against the rights of all persons claiming to be entitled to any portion of the monies so distributed.

Apportionment of salvage.

When there are different sets of Salvors.

When persons who have set about rescuing a ship, are unable to complete their work by bringing her to her own port, or to some place of safety, they do not thereby forfeit all claim to salvage. If a second set of salvors comes to their assistance, the amount awarded will be divided between the two sets, according to the merits of their respective services (*l*); and second salvors cannot lawfully make it a condition of giving assistance that the original salvors shall abandon all claim to any reward (*m*). If the first set have quitted the ship without the intention of returning, and the second set complete her rescue, the first set will still be entitled to salvage, if what they did facilitated or diminished the labours of the second set (*n*).

Incomplete service.

If first set quit the ship.

In ordinary cases of distress, and as long as the master remains on board, it is his province to determine what salvage services shall be rendered, and he may accept or refuse any offers of assistance as he

Master to determine what services shall be given.

(*l*) *The Watt*, 2 W. Rob. 70; *The Champion*, Br. & L. 71.
(*m*) *The Henry Evbank*, 1 Sumner (Amer. Rep.), 400.
(*n*) Parsons on Shipping (ed. 1869), II. 281; *The Atlas*, Lush. 518; *The Underwriter*, 4 Blatch. (Amer. Rep.) 94.

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Derelict.

thinks proper (*o*). But when a vessel has become a legal derelict, disputes frequently arise between different sets of salvors. If persons who have taken possession of a derelict are wrongfully dispossessed of her by any other persons, the whole reward goes to the first salvors (*p*); and if the second set have intruded their services without any sufficient reason, the first set alone will reap the benefit of such services (*q*).

Meaning of derelict.

A vessel becomes a legal derelict when she is abandoned by her master and crew, *sine spe recuperandi* (*r*). The mere leaving a vessel if the crew intend to return, will not make her a legal derelict (*s*). The intention is the important point, and there is a wide difference between vessels abandoned in the open sea, and those left near a coast (*t*). It has been held that a barge drifting about in the Thames with no one on board, is not derelict (*u*).

INSTRUCTIONS FROM THE BOARD OF TRADE

TO THE RECEIVERS OF ADMIRALTY DROITS CONCERNING THE APPORTIONMENT OF SALVAGE.

When the amount payable is less than 200*l*.

In all cases in which the aggregate amount payable for salvage has been settled either by agreement or by legal decision, and does not exceed 200*l*., the person who is to pay it may, for the purpose of avoiding further litigation or difficulty, apply to the receiver to receive it and distribute it amongst the several claimants. The receiver will thereupon so receive and distribute it, unless there are any special circumstances, such, for instance, as a claim for salvage on his own account, or extraordinary questions of doubt or difficulty, which render it impossible for him to do so. In all cases in which he refuses to act, he will at once report the case and his reasons for refusing to the Board of Trade. Upon receiving the money he will grant a certificate in the form marked (Wr. 7.) in the appendix, and proceed to apportion the amount among the salvors. In doing this he will avail himself of the assistance of the coast guard officer (if any) who has been present. A copy of the certificate shall be kept by the receiver. Upon payment a receipt must be taken from the various parties in form (Wr. 8.) in the appendix.

Principles of apportionment.

The principles which regulate the apportionment of a salvage reward amongst the parties entitled thereto are in most cases comparatively simple. The cases which will fall within the cognisance of receivers, will generally be found to belong to one or other of the following classes. Where the salvage services have been rendered:

(*a*.) By revenue cruisers or coast guard men.
(*b*.) By smacksmen, boatmen, or fishermen.
(*c*.) By landsmen or beachmen.
(*d*.) By the master and crew of some vessel.

(*o*) Jones on Salvage, 55; *The Dantzic Packet*, 3 Hagg. Ad. 383; *The Glasgow Packet*, 2 W. Rob. 306.
(*p*) *The Blendenhall*, 1 Dods. Ad. 414.
(*q*) *Ib.*; Parsons on Shipping (ed. 1869), II. 282; *The Fleece*, 3 W. Rob. 278; *The Diana*, 2 Asp. Mar. Law Cas. 367.
(*r*) *The Inca*, 12 Moo. P. C. 189; Swa. 370; *The Aquila*, 1 C. Rob. 40.
(*s*) *The Sarah Bell*, 4 Notes of Cases, 146; *The Clarisse*, Swa. 130.
(*t*) *The Florence*, 16 Jur. 572; *The Fenix*, Swa. 13; *The Cosmopolitan*, 6 Notes of Cases, Supp. xxvi. Irish.
(*u*) *The Zeta*, 33 L. T. N. S. 477; L. R. 4 A. & E. 460.

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(*a.*) As regards the first class of salvors, the revenue cruisers and coast guard men, rules have been laid down for the distribution of rewards of all kinds amongst the officers and men engaged; and the receivers should therefore pay over the whole amount due to the officers and men to the inspecting commander of the district, who will distribute the same under the authority of the comptroller general of the coast guard. A special report should be made by the inspecting commander in cases where special skill or enterprise has been shown, or special risk incurred by any individual, in order that directions may be issued, if necessary, for giving a special reward.

Revenue cruisers or coast guard men.

(*b.*) With regard to the second class of salvors, the smacksmen, boatmen, and fishermen, it will generally be found that there is a scale of distribution recognised and agreed upon amongst them; the smack or boat has a certain number of shares, and the remainder belong to the master and crew in certain agreed proportions. Where such a scale exists, it should be strictly adhered to in making an apportionment of salvage, unless indeed any one or more of the men have shown great skill and enterprise, or incurred greater risk than the others, when an exception may sometimes be made in their favour.

Smacksmen, boatmen, or fishermen.

Where, however, salvage has been awarded to the crew of a smack or boat, amongst whom there is no such agreed scale of distribution, the receivers will do well in making the apportionment to follow the scale of distribution generally adopted amongst the smacksmen and boatmen in the neighbourhood; as such agreements are generally found to be based upon principles of justice and equity, and are such as best conduce to the interests of the community by whom they have been adopted.

Where a cargo of fish has been spoiled or injured in rendering the salvage service, care should be taken in making the apportionment, to ascertain upon whom the loss will fall, and a corresponding allowance should be made to them.

Cargoes of fish.

(*c.*) With regard to the third kind of salvors, beachmen and landsmen, it will generally be proper to divide the salvage equally amongst them all. They will, probably, in most instances, be found to belong to the same class in life, to have incurred the same risk and the same amount of labour, and to have shown the same skill in the performance of the services. Should any of them have, however, greatly distinguished themselves, it will be proper to give them a larger proportion of the salvage award.

Landsmen or beachmen.

(*d.*) The fourth class of cases, where the salvage services have been rendered by a vessel and her master and crew, will be found by the receivers to be the most difficult, as the apportionment must depend upon a consideration of the whole circumstances of the case, and whether the preservation of the property is due principally to the services of the salving vessel herself, or to the personal exertions and risk incurred by the master or the crew. As a general rule, it may be stated that where the services have been chiefly performed by the vessel herself, as in the case of a derelict, where the property has been towed into a place of safety, one-half of the salvage reward is given to the owners of the salving vessel, from one-fourth to one-eighth to the master, and the remainder amongst the crew in proportion to their wages. This is the scale of distribution usually adopted where the salvage services have been performed by steamers, and where it may generally be said that success is due chiefly to the power and construction of the vessel herself.

Master and crew of a vessel.

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Where, however, the principal part of the services have not been rendered by the vessel, and where the vessel has not been exposed to any risk or danger, but where the preservation of the property is due in great measure to the personal exertions of the master and crew, then a much smaller portion of the salvage is awarded to the owners of the vessel. It is, however, a question of appreciation, dependent entirely upon the circumstances of each particular case, and in regard to which no positive general rule can be laid down. The greater the risk to the master and crew and the less the risk to the vessel, the greater must be the proportion awarded to the actual salvors, and the less to the owners of the salving vessel.

Apprentices.

Finally.—It should be observed that apprentices are entitled to share in an allotment of salvage; and that the master or the owners of the vessel cannot claim the shares which may fall due to their apprentices; and also, that if a contract giving up or making over any claim to salvage to any person whatever is made by any seaman or apprentice prior to the accruing of such claim, such contract is absolutely void, as being against equity, public policy, and positive enactment. (See s. 233, p. 206.)

Manner of enforcing payment of salvage.

468. Whenever any salvage is due to any person under this Act, the receiver shall act as follows; (that is to say,)

(1.) If the same is due in respect of services rendered in assisting any ship or boat, or in saving the lives of persons belonging to the same, or the cargo or apparel thereof,

Ship detained.

He shall detain such ship or boat, and the cargo and apparel belonging thereto, until payment is made or process has been issued by some competent court for the detention of such ship, boat, cargo, or apparel:

(2.) If the same is due in respect of the saving of any wreck, and such wreck is not sold as unclaimed in pursuance of the provisions hereinafter contained,

Wreck detained.

He shall detain such wreck until payment is made or process has been issued in manner aforesaid:

But it shall be lawful for the receiver, if at any time previously to the issue of such process security is given to his satisfaction for the amount of salvage due, to release from his custody any ship, boat, cargo, apparel, or wreck so detained by him as aforesaid; and in cases where the claim for salvage exceeds two hundred pounds it shall be lawful in England for the High Court of Admiralty of England, in Ireland for the High Court of Admiralty of Ireland, and in Scotland for the Court of Session, to determine any question that may arise

concerning the amount of the security to be given or the sufficiency of the sureties; and in all cases where bond or other security is given to the receiver for an amount exceeding two hundred pounds it shall be lawful for the salvor or for the owner of the property salved, or their respective agents, to institute proceedings in such last-mentioned courts for the purpose of having the questions arising between them adjudicated upon, and the said courts may enforce payment of the said bond or other security in the same manner as if bail had been given in the said court.

When a receiver has given a release of any property, the salvors can no longer detain it, or institute proceedings in rem (*x*).

Jurisdiction of court of session in salvage cases.

25 & 26 Vict. c. 63, s. 51.—The words "Court of Session" in the four hundred and sixty-eighth section of the principal Act shall be deemed to mean and include either division of the Court of Session or the Lord Ordinary officiating on the bills during vacation.

Power of receiver to sell property salved in cases of non-payment.

469. Whenever any ship, boat, cargo, apparel, or wreck, is detained by any receiver for nonpayment of any sums so due as aforesaid, and the parties liable to pay the same are aware of such detention, then, in the following cases, that is to say,

(1.) In cases where the amount is not disputed, and payment thereof is not made within twenty days after the same has become due;

When no appeal lies.

(2.) In cases where the amount is disputed, but no appeal lies from the first tribunal to which the dispute is referred, and payment thereof is not made within twenty days after the decision of such first tribunal;

No appeal lies when the sum in dispute is less than 50*l.*, or when certain formalities have not been complied with (see sec. 464, p. 390, and see the same section as to what is the meaning of "sum in dispute").

When an appeal does lie.

(3.) In cases where the amount is disputed, and an appeal lies from the decision of the first tribunal to some other tribunal, and payment thereof is not made within such twenty days as last aforesaid, or such monition as hereinbefore mentioned is not taken out within such twenty days, or such other proceedings as are according to the

(*x*) *The Lady Catherine Barham*, 1 Mar. Law Cas. 184.

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practice of such other tribunal necessary for the prosecution of an appeal are not instituted within such twenty days ;

The receiver may forthwith sell such ship, boat, cargo, apparel, or wreck, or a sufficient part thereof, and out of the proceeds of the sale, after payment of all expenses thereof, defray all sums of money due in respect of expenses, fees, and salvage, paying the surplus, if any, to the owners of the property sold, or other the parties entitled to receive the same.

Subject to payment of expenses, fees, and salvage, owner entitled to wreck.

470. Subject to the payment of such expenses, fees, and salvage as aforesaid, the owner of any wreck who establishes his claim thereto to the satisfaction of the receiver within one year from the date at which such wreck has come into the possession of the receiver, shall be entitled to have the same delivered up to him.

If no owner appears, the wreck then belongs to the Crown (see sec. 475, p. 398), or to the lord of the manor (see sec. 454, p. 375).

Unclaimed Wreck in the United Kingdom.

Receiver to deliver up possession of unclaimed wreck to lord of manor or other person entitled.

471. In the event of no owner establishing a claim to wreck found in any place in the United Kingdom before the expiration of a year from the date at which the same has come into the possession of the receiver, then, if any such admiral, vice-admiral, lord of any manor, or other person as aforesaid has given notice to and has proved to the satisfaction of the receiver that he is entitled to wreck found at such place, the receiver shall, upon payment of all expenses, fees, and salvage due in respect of such wreck, deliver up possession thereof to such admiral, vice-admiral, lord of the manor, or other person ; and in case of dispute as to the amount of the sums so payable, and also in case of default being made in payment thereof, such dispute shall be determined and payment enforced in the manner in which such amount and payment is hereby directed to be determined and enforced in cases where any owner establishes his claim to wreck.

For grants to lords of manors see sec. 454, p. 375. Where an owner appears, disputes as to the amount of fees payable are to be determined by the Board of Trade, whose decision shall be final (see sec. 456, p. 378). A receiver has the same lien and the same remedies for expenses as a salvor (see sec. 455, p. 376, and sec. 497, p. 412).

472. If any dispute arises between the receiver and any such admiral, vice-admiral, lord of any manor, or other person as aforesaid, as to the validity of his title to wreck, or if divers persons claim to be entitled to wreck found at the same place, the matter in dispute may be decided by two justices in the same manner in which disputes as to salvage coming within the jurisdiction of justices are hereinbefore directed to be determined. (*See sec.* 461, *p.* 388.)

Disputed title to wreck how to be decided.

25 & 26 Vict. c. 63, s. 52.—Upon delivery of wreck or of the proceeds of wreck by any receiver to any person in pursuance of the provisions of the Eighth Part of the Principal Act, such receiver shall be discharged from all liability in respect thereof, but such delivery shall not be deemed to prejudice or affect any question concerning the right or title to the said wreck which may be raised by third parties, nor shall any such delivery prejudice or affect any question concerning the title to the soil on which the wreck may have been found.

Delivery of wreck by receiver not to prejudice title.

473. If any party to such dispute is unwilling to refer the same to two justices, or, having so referred the same, is dissatisfied with their decision, he may within three months from the expiration of such year as aforesaid, or from the date of such decision as aforesaid, as the case may be, take such proceedings as he may be advised in any court of law, equity, or admiralty, having jurisdiction in the matter, for establishing his title.

Appeal from decision of justices.

474. The Board of Trade shall have power, with the consent of the Treasury, out of the revenue arising under the Eighth Part of this Act, for and on behalf of Her Majesty, her heirs and successors, to purchase all such rights to wreck as may be possessed by any person or body corporate, other than Her Majesty; and for the purpose of facilitating such purchases the provisions of the "Lands Clauses Consolidation Act, 1845," and the "Lands Clauses Consolidation (Scotland) Act, 1845," relating to the purchase of lands by agreement, shall be incorporated with this Act; and in the construction of this Act and the said incorporated Acts this Act shall be considered to be the "Special Act;" and any such rights to wreck as aforesaid shall be considered as an interest in land authorised to be taken by the Special Act, and Her Majesty, her heirs and successors, shall be considered as the promoters of the undertaking.

Power of the Board of Trade on behalf of the Crown to purchase rights to wreck.

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The sections of the Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), here referred to, are secs. 6 to 15 inclusive. Those of the Lands Clauses Consolidation (Scotland) Act, 1845 (8 & 9 Vict. c. 19), are secs. 6 to 16 inclusive.

Unclaimed wreck to be sold.

475. If no owner establishes his claim to wreck found at any place before the expiration of such period of a year as aforesaid, and if no admiral, vice-admiral, lord of any manor, or person other than Her Majesty, her heirs and successors, is proved to be entitled to such wreck, the receiver shall forthwith sell the same, and after payment of all expenses attending such sale, and deducting therefrom his fees, and all expenses (if any) incurred by him, and paying to the salvors such amount of salvage as the Board of Trade may in each case or by any general rule determine, pay the same into the receipt of Her Majesty's Exchequer in such manner as the Treasury may direct, and the same shall be carried to and form part of the consolidated fund of the United Kingdom.

In this section the mistake was made of permanently alienating one of the rights of the Crown in its office of Admiralty (see sec. 439, p. 369). At the commencement of a new reign, if the Sovereign consents to give up the hereditary revenue of the Crown, an Act is passed conferring instead a fixed revenue from the Consolidated Fund. This mistake was rectified by the following enactment.

Crown rights to wreck.

25 & 26 Vict. c. 63, s. 53.—Whereas by the Principal Act it is provided that the proceeds of wreck, if the same is not claimed by the owner within a year, and if no person other than Her Majesty, her heirs and successors, is proved to be entitled thereto, shall, subject to certain deductions, be paid into the receipt of Her Majesty's exchequer in such manner as tke Commissioners of the Treasury may direct, and that the same shall be carried to and form part of the Consolidated Fund of the United Kingdom :

And whereas doubts have been entertained whether the said last-recited provision is consistent with the arrangements concerning the hereditary revenues of the Crown effected by the Act of the first year of Her present Majesty, chapter two : And whereas doubts have also been entertained whether due provision is made by the said Act for paying to the revenues of the Duchies of Lancaster and Cornwall respectively such of the said proceeds as may belong to those Duchies :

It is hereby declared, That such of the said proceeds of wreck as belong to Her Majesty in right of her crown shall, during the life of Her present Majesty (whom God long preserve), be carried to and form part of the Consolidated Fund

of the United Kingdom, and shall after the decease of Her present Majesty (whom God long preserve) be payable and paid to Her Majesty's heirs and successors:

And it is hereby further declared, That such of the said proceeds of wreck as belong to Her Majesty in right of her Duchy of Lancaster shall be paid to the Receiver-General of the said Duchy, or his sufficient deputy or deputies, as part of the revenues of the said Duchy, and be dealt with accordingly:

And it is hereby further declared and enacted, that the provision in the Principal Act contained regarding the sale of unclaimed wreck to which no owner establishes his claim within the period of one year, and to which no admiral, vice-admiral, lord of any manor, or person other than Her Majessty, her heirs and successors, is proved to be entitled, is intended and shall be construed to apply to wreck of the sea belonging to Her Majesty, her heirs and successors, in respect of the Duchy of Cornwall, or to the Duke of Cornwall for the time being in respect of his Duchy of Cornwall; but that the proceeds of such wreck shall, subject to such deductions as are in the same Act mentioned, form part of the revenues of the Duchy of Cornwall, and be dealt with accordingly.

Jurisdiction of the High Court of Admiralty.

476. Subject to the provisions of this Act, the High Court of Admiralty shall have jurisdiction to decide upon all claims whatsoever relating to salvage, whether the services in respect of which salvage is claimed were performed upon the high seas, or within the body of any county, or partly in one place and partly in the other, and whether the wreck is found at sea or cast upon the land, or partly in the sea and partly on land.

High Court of Admiralty may decide on all salvage cases, whether on sea or land.

A jurisdiction in certain Admiralty causes was conferred on the County Courts by the County Courts Admiralty Jurisdiction Acts, 1868, 1869 (see Part X., p. 451). The Admiralty Court being now merged in the High Court of Justice (Judicature Act, 1873, s. 16), it possesses a jurisdiction equal to that of any other division of the High Court, and hence may entertain any causes except such as are specially assigned to other divisions (Judicature Act, 1873, s. 34). To avoid prolixity, the name "Admiralty Court" has been used throughout this work, instead of the correct appellation of "Probate, Divorce, and Admiralty Division of the High Court of Justice."

Offences in respect of Wreck.

477. Whenever any ship or boat is stranded or otherwise in distress on or near the shore of any sea or tidal water in the United Kingdom, and such ship or boat, or any part of the

In case of shipwrecked vessel being plundered by

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a tumultuous assemblage the hundred to be liable for damages.

cargo or apparel thereof, is plundered, damaged, or destroyed by any persons riotously and tumultuously assembled together, whether on shore or afloat, full compensation shall be made to the owner of such ship, boat, cargo, or apparel, as follows; (that is to say,)

In England by the inhabitants of the hundred, wapentake, ward, or district in the nature of a hundred, by whatever name denominated, in or nearest to which the said offence is committed, in manner provided by an Act of the eighth year of the reign of King George the Fourth, chapter thirty-one, in case of the destruction of churches and other buildings by a riotous assemblage, or as near thereto as circumstances permit:

7 & 8 G. 4, c. 31.

In Ireland by the inhabitants of the county, county of a city or town, barony, town or towns, parish or parishes, in or nearest to which such offence is committed, in manner provided by an Act of the fourth year of the reign of King William the Fourth, chapter thirty-seven, for the recovery of satisfaction and amends for the malicious demolition of or injury to churches, chapels, and other buildings used for religious worship, according to the usage of the United Church of England and Ireland, or as near thereto as circumstances permit:

3 & 4 W. 4, c. 37, s. 72.

In Scotland by the inhabitants of the county, city, or borough in or nearest to which such offence is committed, in manner provided by an Act of the first year of King George the First, statute two, chapter five, with respect to prosecutions for repairing the damages of any churches and other buildings, or as near thereto as circumstances permit.

1 G. 1, st. 2, c. 5.

478. Every person who does any of the following acts; (that is to say,)

Penalty for plundering in cases of shipwreck, for obstructing the saving of shipwrecked property, and for secreting the same.

(1.) Wrongfully carries away or removes any part of any ship or boat stranded or in danger of being stranded or otherwise in distress on or near the shore of any sea or tidal water, or any part of the cargo or apparel thereof, or any wreck; or

(2.) Endeavours in any way to impede or hinder the saving of such ship, boat, cargo, apparel, or wreck; or

(3.) Secretes any wreck, or obliterates or defaces any marks thereon;

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Shall, in addition to any other penalty or punishment he may be subject to under this or any other Act or law, for each such offence incur a penalty not exceeding 50*l.*; and every person not being a receiver or a person hereinbefore authorised to take the command in cases of ships being stranded or in distress, or not acting under the orders of such receiver or person, who, without the leave of the master, endeavours to board any such ship or boat as aforesaid, shall for each offence incur a penalty not exceeding 50*l.*; and it shall be lawful for the master of such ship or boat to repel by force any such person so attempting to board the same.

This section does not prevent any one offering his services to a vessel in distress. If the master is on board, it is his province to determine what services shall be accepted (*y*).

Somewhat similar provisions are enacted in the Larceny Act, 1861.

Stealing from ship in distress or wrecked.

24 & 25 Vict. c. 96, s. 64.—Whosoever shall plunder or steal any part of any ship or vessel which shall be in distress, or wrecked, stranded, or cast on shore, or any goods, merchandise, or articles of any kind belonging to such ship or vessel, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for any term not exceeding fourteen years and not less than *five* (*z*) years, or to be imprisoned for any term not exceeding two years with or without hard labour, and with or without solitary confinement; and the offender may be indicted and tried either in the county or place in which the offence shall have been committed, or in any county or place next adjoining.

Persons in possession of shipwrecked goods not giving a satisfactory account.

24 & 25 Vict. c. 96, s. 65.—If any goods, merchandise, or articles of any kind belonging to any ship or vessel in distress, or wrecked, stranded, or cast on shore, shall be found in the possession of any person or on the premises of any person with his knowledge, and such person, being taken or summoned before a justice of the peace, shall not satisfy the justice that he came lawfully by the same, then the same shall, by order of the justice, be forthwith delivered over to or for the use of the rightful owner thereof; and the offender shall, on conviction of such offence before the justice, at the discretion of the justice, either be committed to the common gaol or house of correction, there to be imprisoned only, or to be imprisoned and kept to hard labour, for any term not exceeding six months, or else shall forfeit and pay, over and above the value of the goods, merchandise, or articles, such sum of money not exceeding twenty pounds as to the justice shall seem meet.

(*y*) *The Dantzic Packet*, 3 Hagg. Ad. 383; and see s. 467, p. 391.
(*z*) See under s. 479, p. 402.

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If any person offers shipwrecked goods for sale, the goods may be seized, &c.

24 & 25 Vict. c. 96, s. 66.—If any person shall offer or expose for sale any goods, merchandise, or articles whatsoever which shall have been unlawfully taken, or shall be reasonably suspected so to have been taken, from any ship or vessel in distress, or wrecked, stranded, or cast on shore, in every such case any person to whom the same shall be offered for sale, or any officer of the customs or excise, or peace officer, may lawfully seize the same, and shall with all convenient speed carry the same, or give notice of such seizure, to some justice of the peace; and if the person who shall have offered or exposed the same for sale, being summoned by such justice, shall not appear and satisfy the justice that he came lawfully by such goods, merchandise, or articles, then the same shall, by order of the justice, be forthwith delivered over to or for the use of the rightful owner thereof, upon payment of a reasonable reward (to be ascertained by the justice) to the person who seized the same, and the offender shall, on conviction of such offence by the justice, at the discretion of the justice, either be committed to the common gaol or house of correction, there to be imprisoned only, or to be imprisoned and kept to hard labour for any term not exceeding six months, or else shall forfeit and pay over and above the value of the goods, merchandise, or articles, such sum of money not exceeding twenty pounds as to the justice shall seem meet.

Penalty for selling wreck in foreign ports.

479. If any person takes into any foreign port or place any ship or boat stranded, derelict, or otherwise in distress on or near the shore of the sea or of any tidal water situate within the limits of the United Kingdom, or any part of the cargo or apparel thereof, or anything belonging thereto, or any wreck found within such limits as aforesaid, and there sell the same, he shall be guilty of felony, and be subject to penal servitude for a term not exceeding *five* years.

In the Merchant Shipping Act, the term of penal servitude is limited to four years, but by 27 & 28 Vict. c. 47, s. 2, No person shall be sentenced to penal servitude for a period of less than five years; and where under any Act now in force, a period of less than five years is the utmost sentence of penal servitude that can be awarded, a period of five years shall in such Act be substituted for the less period.

Dealers in Marine Stores and Manufacturers of Anchors.

Regulations to be observed by dealers in marine stores.

480. Every person dealing in, buying, and selling anchors, cables, sails, or old junk, old iron, or marine stores of any description, shall conform to the following regulations; (that is to say,)

(1.) He shall have his name, together with the words "dealer in marine stores," painted distinctly in letters of not less than six inches in length on every warehouse or other place of deposit belonging to him ; Name on warehouse.

If he does not he shall incur a penalty not exceeding 20*l.* :

(2.) He shall keep a book or books, fairly written, and shall enter therein an account of all such marine stores as he may from time to time become possessed of, stating, in respect of each article, the time at which and the person from whom he purchased or received the same, adding, in the case of every such last-mentioned person, a description of his business and place of abode ; Books to be kept.

If he does not he shall incur for the first offence a penalty not exceeding 20*l.*, and for every subsequent offence a penalty not exceeding 50*l.* :

(3.) He shall not, by himself or his agents, purchase marine stores of any description from any person apparently under the age of sixteen years ; Not to buy stores from persons under 16.

If he does so he shall incur for the first offence a penalty not exceeding 5*l.*, and for every subsequent offence a penalty not exceeding 20*l.* :

(4.) He shall not cut up any cable, or any similar article, exceeding five fathoms in length, or unlay the same into twine or paper stuff, on any pretence whatever, without obtaining such permit and publishing such notice of his having so obtained the same as is hereinafter mentioned ; Cables not to be cut up without permit.

If he does so he shall incur for the first offence a penalty not exceeding 20*l.*, and for every subsequent offence a penalty not exceeding 50*l.*

481. In order to obtain such permit as aforesaid, a dealer in marine stores shall make a declaration before some justice of the peace having jurisdiction over the place where such dealer resides, containing the following particulars ; (that is to say,) Manner of obtaining permit to cut up cables.

(1.) A statement of the quality and description of the cable or other like article about to be cut up or unlaid : Description of cable.

(2.) A statement that he purchased or otherwise acquired the same *bonâ fide* and without fraud, and without any knowledge or suspicion that the same had been come by dishonestly : Honestly acquired.

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(3.) A statement of the name and description of the person from whom he purchased or received the same:

From whom received.

And it shall be lawful for the justice before whom any such declaration is made, or for the receiver of the district in which such dealer in marine stores resides, upon the production of any such declaration as aforesaid, to grant a permit authorising him to cut up or unlay such cable or other like article.

Permit to be advertised before dealer proceeds to act thereon.

482. No dealer in marine stores who has obtained such permit as aforesaid shall proceed by virtue thereof to cut up or unlay any cable or other like article until he has for the space of one week at the least before doing any such act published in some newspaper published nearest to the place where he resides, one or more advertisements notifying the fact of his having so obtained a permit, and specifying the nature of the cable or other article mentioned in the permit, and the place where the same is deposited, and the time at which the same is intended to be so cut up or unlaid; and if any person suspects or believes that such cable or other article is his property, he may apply to any justice of the peace for a warrant; and such justice of the peace may, on the applicant making oath, or, if a person entitled to make an affirmation, making an affirmation in support of such his suspicion or belief, grant a warrant by virtue whereof the applicant shall be entitled to require the production by such dealer as aforesaid of the cable or other article mentioned in the permit, and also of the book of entries hereinbefore directed to be kept by every dealer in marine stores; and, upon such cable or other article and book of entries being produced, to inspect and examine the same; and if any dealer in marine stores makes default in complying with any of the provisions of this section, he shall for the first offence incur a penalty not exceeding 20*l.*, and for every subsequent offence a penalty not exceeding 50*l.*

Manufacturers to place marks on anchors.

483. Every manufacturer of anchors shall, in case of each anchor which he manufactures, mark in legible characters on the crown and also on the shank under the stock, his name or initials, with the addition of a progressive number and the weight of such anchor; and if he makes default in doing so he shall for each offence incur a penalty not exceeding 5*l.*

Persons entitled to Salvage.

The general rule is, that anyone who assists in rescuing a ship, or the lives or cargo in her, from danger on the seas, is entitled to a salvage

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remuneration. But there are certain exceptions, the chief of which is, that the salvor should not stand in any particular relation to the ship in distress, and that he should not be subject to the duty of employing himself for her preservation (*a*). If, however, the duty should cease to exist, or the work done in rescuing the ship should be such as not to come within the scope of the salvor's duty, he will then become entitled to the reward.

Salvor not to be connected with ship salved.

The crew cannot be salvors as long as their contract with the owners remains in force, because it is their duty to do all in their power to preserve the ship and cargo (*b*). But if the vessel has been abandoned by the master and crew, and some of the crew afterwards return on board and save her, they can then claim salvage; such abandonment, however, must have been *sine spe revertendi*, and have taken place by order of the master (*c*).

The crew.

The contract of the seamen is also dissolved by their being discharged, or by the ship being captured, and after either of these occurrences the crew may become entitled to salvage in respect of their ship (*d*).

A pilot cannot claim salvage for any acts that come within his duty as a pilot, but he will be entitled to reward for any efforts or risk beyond such duty (*e*).

Pilots.

Although under ordinary circumstances a passenger is at liberty to quit the ship, yet, when she is in danger, it is his duty to remain and assist in saving her, under the direction of the master and officers. Such assistance, as, for instance, if he works at the pumps, or moves the cargo, will not entitle a passenger to salvage (*f*). But he is not bound to all the duties of a seaman, and if he does anything extraordinary, such as taking direction of the ship, or devising some successful method for saving her, he will become entitled to a reward (*g*).

Passengers.

It is a general rule that a party not actually occupied in effecting a salvage service is not entitled to share in any salvage remuneration. There is an exception to this in favour of the owners of vessels, since it is often the vessel itself which is the chief means of effecting the salvage. And when ships, in rendering assistance, have either been diverted from their proper employment, or have experienced a special mischief occasioning to the owners some inconvenience and loss an equitable compensation may reasonably be claimed (*h*). When salvage has been effected by a portion of the salving ship's crew going on board and navigating

Ship-owners.

Part of crew left behind.

(*a*) *The Neptune*, 1 Hagg. Ad. 236; *The Governor Raffles*, 2 Dods. Ad. 14.

(*b*) *The Two Friends*, 1 C. Rob. 278; *The John Perkins*, U. S. C. C. Mass. 21 L. R. 87, quoted in Parsons on Shipping (ed. 1869), II. 265.

(*c*) *The Florence*, 16 Jur. 572; *The Warrior*, Lush. 470; *The Blaireau*, 2 Cranch (Amer. Rep.), 240; *The Lejonet*, 1 Asp. Mar. Law Cas. 438; L. R. 3 A. & E. 556.

(*d*) *The Warrior*, Lush. 476; *Phillips* v. *McCall*, 4 Wash. C. C. (Amer. Rep.) 141.

(*e*) *The Frederick*, 1 W. Rob. 16; *The Hebe*, 2 W. Rob. 246; *The Industry*, 3 Hagg. Ad. 203; *The Jonge Andries*, Swa. 229. Not every slight exertion will give a pilot a claim to salvage, he must do something considerable. *The Aeolus*, L. R. 4 A. & E. 29.

(*f*) *The Branstone*, 2 Hagg. Ad. 3 n.; *The Vrede*, Lush. 322.

(*g*) *Newman* v. *Walters*, 3 B. & P. 612; *The Great Eastern*, 11 L. T. N. S. 516; *The Merrimac*, 18 L. T. N. S. 92.

(*h*) *The Vine*, 2 Hagg. Ad. 2; *The Charlotte*, 3 W. Rob. 72.

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the ship in distress, those who remain on board the salving ship are entitled to share in the salvage, although they have not directly contributed to the rescue of the vessel. They must, however, have been willing to join in the undertaking if necessary (*i*).

Ship's agent.

A ship's agent may claim salvage though his remuneration will be on a lower scale than that of persons quite unconnected with the vessel (*k*).

Magistrates.

If a magistrate exerts himself beyond the limits of his official duty in saving a vessel he will become entitled to salvage (*l*).

Forfeiture.

Salvage may be forfeited in some cases (see s. 498, p. 414).

Agreements for mutual assistance.

When vessels sail together, and agree mutually to assist each other, no salvage can be claimed for any help one may receive from the other (*m*), but such an agreement must be clearly established before the ordinary right to salvage can be ousted (*n*).

Salvage by Her Majesty's Ships.

No claim for salvage services to be allowed in respect of loss or risk of Her Majesty's ships or property.

484. In cases where salvage services are rendered by any ship belonging to Her Majesty or by the commander or crew thereof, no claim shall be made or allowed for any loss, damage, or risk thereby caused to such ship, or to the stores, tackle, or furniture thereof, or for the use of any stores or other articles belonging to Her Majesty supplied in order to effect such services, or for any other expense or loss sustained by Her Majesty by reason of such services.

When salvage is effected by one of Her Majesty's ships, "salvor" shall mean the person in command of such ship (see s. 2, p. 4).

Although the officers and crews of Her Majesty's ships do not risk their own property in effecting salvage services, this will not disentitle them to a reward, but the fact will be considered in estimating its amount (*o*).

Reward for personal efforts.

They may claim compensation for their personal efforts, subject to their obtaining the permission of the Admiralty (see s. 485, *post*). The captain of a ship in the public service may make an agreement as to the amount of salvage he and his crew shall be paid; and as with all such agreements (see s. 460, p. 383), provided it be honest and thoroughly understood by all the parties concerned, the Court will uphold it even though the salvage agreed for is greater than what would have been awarded by the Court (*p*).

(*i*) *The Sarah Jane*, 2 W. Rob. 110; *The Mountaineer*, Ib. 7; *The Centurion*, Ware (Amer. Rep.), 477; *The Nicolina*, 2 W. Rob. 175; *The Roe*, Swa. 84; *The Charles*, 1 Asp. Mar. Law Cas. 296; L. R. 3 A. & E. 536.

(*k*) Jones on Salvage, 47; *The Favourite*, 2 W. Rob. 258; *The Purissima Conception*, 3 W. Rob. 181; *Cargo ex Honor*, L. R. 1 A. & E. 87.

(*l*) *The Aquilla*, 1 C. Rob. 46.

(*m*) *The Zephyr*, 2 Hagg. Ad. 43; *The Waterloo*, 2 Dods. Ad. 436.

(*n*) *The Ganges*, 1 Notes of Cas. 90.

(*o*) *The Earl of Eglington*, Swa. 7; *The Rapid*, 3 Hagg. Ad. 421; *The Lustre*, 3 Hagg. Ad. 154.

(*p*) *Cargo ex Woosung*, 33 L. T. N. S. 394.

485. No claim whatever on account of any salvage services rendered to any ship or cargo or to any appurtenances of any ship by the commander or crew or part of the crew of any of Her Majesty's ships shall be finally adjudicated upon unless the consent of the Admiralty has first been obtained, such consent to be signified by writing under the hand of the Secretary to the Admiralty; and if any person who has originated proceedings in respect of any such claim fails to prove such consent to the satisfaction of the Court, his suit shall stand dismissed and he shall pay all the costs of such proceedings; provided that any document purporting to give such consent and to be signed by the Secretary to the Admiralty shall be *primâ facie* evidence of such consent having been given.

Claims for salvage by Her Majesty's officers not to be determined without consent of Admiralty.

The permission of the Admiralty to prosecute a salvage claim in respect of property, will entitle officers and men of Her Majesty's ships to claim rewards in respect of services rendered to passengers belonging to the ship (*q*). But if the passengers or crew of the damaged vessel have reached some shore in safety, and are not in immediate danger, the fact of taking them on board and conveying them away will give no claim to life salvage, even though they might have perished from hunger, or at the hands of natives, if left behind (*r*). An officer who ordered a steamboat, hired by Government, and some of his own crew to go and render assistance to a vessel in distress, was held entitled to salvage (*s*).

486. Whenever services for which salvage is claimed are rendered to any ship or cargo, or to any part of any ship or cargo, or to any appurtenances of any ship, at any place out of the United Kingdom and the four seas adjoining thereto, by the commander or crew or part of the crew of any of Her Majesty's ships, the property alleged to be salved shall, if the salvor is justified by the circumstances of the case in detaining it at all, be taken to some port where there is either a consular officer or a vice-admiralty court; and within twenty-four hours after arriving at such port, the said salvor and the master or other person in charge of the property alleged to be salved shall each deliver to the consular officer or vice-admiralty judge there a statement verified on oath, specifying, so far as they respectively can, and so far as the particulars required apply to the case,

Steps to be taken when salvage services have been rendered by Her Majesty's ships abroad.

(*q*) *The Alma*, Lush. 378; *The Mary Pleasants*, Swa. 224.
(*r*) *Cargo ex Woosung*, 33 L. T. N. S. 394; 3 Asp. Mar. Law Cas. 50.
(*s*) *The Nile*, L. R. 4 A. & E. 449.

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Place and condition of ship. (1.) The place, condition, and circumstances in which the said ship, cargo, or property was at the time when the services were rendered for which salvage is claimed:

Nature of service. (2.) The nature and duration of the services rendered:

And the salvor shall add to his statement,

Proportion claimed. (3.) The proportion of the value of the said ship, cargo, and property, and of the freight which he claims for salvage, or the values at which he estimates the said ship, freight, cargo, and property respectively, and the several amounts that he claims for salvage in respect of the same:

Other matters. (4.) Any other circumstances he thinks relevant to the said claim:

And the said master or other person in charge of the said ship, cargo, or property, shall add to his statement,

Copy of certificate. (3.) A copy of the certificate of registry of the said ship, and of the indorsements thereon, stating any change which (to his knowledge or belief) has occurred in the particulars contained in such certificate; and stating also, to the best of his knowledge and belief, the state of the title to the ship for the time being, and of the incumbrances and certificates of mortgage or sale, if any, affecting the same, and the names and places of business of the owners and incumbrancers:

Freighter. (4.) The name and place of business or residence of the freighter (if any) of the said ship, and the freight to be paid for the voyage she is then on:

Cargo. (5.) A general account of the quantity and nature of the cargo at the time the salvage services were rendered:

Owner of cargo. (6.) The name and place of business or residence of the owner of such cargo and of the consignee thereof:

Values. (7.) The values at which the said master estimates the said ship, cargo, and property, and the freight respectively, or, if he thinks fit, in lieu of such estimated value of the cargo, a copy of the ship's manifest:

Salvage. (8.) The amounts which the master thinks should be paid as salvage for the services rendered:

Goods saved. (9.) An accurate list of the property saved, in cases where the ship is not saved:

Sale of ship. (10.) An account of the proceeds of the sale of the said ship,

cargo, or property, in cases where the same or any of them are sold at such port as aforesaid :

(11.) The number, capacities, and condition of the crew of the said ship at the time the said services were rendered : Crew.

(12.) Any other circumstances he thinks relevant to the matters in question :

(13.) A statement of his willingness to execute a bond, in the form in the Table marked W. in the schedule hereto, in such amount as the said consular officer or vice-admiralty judge may fix. Bond.

TABLE W.

SALVAGE BOND.

Salvage bond.

[*N.B.—Any of the particulars not known, or not required, by reason of the claim being only against the cargo, &c., may be omitted.*]

WHEREAS certain salvage services are alleged to have been rendered by the ship [*insert names of ship and of commander*], commander, to the merchant ship [*insert names of ship and master*], master belonging to [*name and place of business or residence of owner of ship*], freighted by [*the same of the freighter*], and to the cargo therein, consisting of [*state very shortly the descriptions and quantities of the goods, and the names and addresses of their owners and consignees*] :

And whereas the said ship and cargo have been brought into the port of [*insert name and situation of port*], and a statement of the salvage claim has been sent to [*insert the name of the Consular Officer or Vice-Admiralty Judge, and of the office he fills*], and he has affixed the amount to be inserted in this bond at the sum of [*state the sum*] :

Now I, the said [*master's name*], do hereby, in pursuance of the "Merchant Shipping Act, 1854," bind the several owners for the time being of the said ship and of the cargo therein, and of the freight payable in respect of such cargo, and their respective heirs, executors, and administrators, to pay among them such sum not exceeding the said sum of [*state the sum fixed*], in such proportions and to such persons as [*if the parties agree on any other Court, substitute the name of it here,*] the High Court of Admiralty in England shall adjudge to be payable as salvage for the services so alleged to have been rendered as aforesaid.

In witness whereof I have hereunto set my hand and seal, this [*insert the date*] day of

Signed, sealed, and delivered by the said [*master's name*].

(L.S.)

In the presence of [*name of Consular Officer or Vice-Admiralty Judge, and of the office he fills.*]

487. The said consular officer or judge, as the case may be, shall within four days after receiving the aforesaid statements fix the amount to be inserted in the said bond at such sum as Consular officer or judge to fix amount for

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which a bond is to be given.

he thinks sufficient to answer the demand for the salvage services rendered; but such sum shall not exceed one half of the value which in his estimation the said ship, freight, and cargo, or any parts thereof in respect of which salvage is claimed, are worth; and the said consular officer or judge may, if either of the aforesaid statements is not delivered to him within the time hereby required, proceed *ex parte*, but he shall in no case under this Act require the cargo to be unladen; and the said consular officer may in any proceeding under this Act relating to salvage take affidavits and receive affirmations.

On master executing bond, the right of detention to cease.

488. The said consular officer or judge shall send notice of the sum which he has so fixed as aforesaid to the said salvor and the said master; and upon such master executing a bond in such form as aforesaid, with the said sum inserted therein, in the presence of the said officer or judge (who shall attest the same), and delivering the same to the said salvor, the right of the said salvor to detain or retain possession of the said ship, cargo, or property, or any of them in respect of the said salvage claim, shall cease.

Provision for additional security in the case of ships owned by persons resident out of Her Majesty's dominions.

489. If the ship, cargo, or property in respect of which the claim for salvage is made is not owned by persons domiciled in Her Majesty's dominions, the right of the salvor to detain or retain possession thereof shall not cease unless the master procures, in addition to the said bond, such security for the due performance of the conditions thereof as the said officer or judge considers sufficient for the purpose, and places the same in the possession or custody of the said officer or judge, or, if the salvor so desires, in the possession or custody of the said officer or judge jointly with any other person whom the said salvor appoints for the purpose.

Documents to be sent to England.

490. The said consular officer or judge shall at the earliest opportunity transmit the said statements and documents so sent to him as aforesaid, and a notice of the sum he has so fixed as aforesaid to the High Court of Admiralty of England, or if the said salvor and the said master or other person in charge as aforesaid agree that the said bond shall be adjudicated upon by any vice-admiralty court, to such court.

As to Vice Admiralty Courts and their jurisdiction, see Part x., p. 456.

Whom the bond shall bind.

491. The said bond shall bind the respective owners of the said ship, freight, and cargo, and their respective heirs,

executors, and administrators, for the salvage adjudged to be payable in respect of the said ship, freight, and cargo respectively.

Court in which it is to be adjudicated on.

492. The said bond shall be adjudicated on and enforced by the High Court of Admiralty in England, or if the said salvor and master at the time of the execution of the said bond agree upon any vice-admiralty court, then by such vice-admiralty court; and any such vice-admiralty court may in every proceeding under this Act, have and exercise all powers and authorities whatsoever which the said High Court of Admiralty now has or at any time may have in any proceeding whatsoever before it; and in cases where any security for the due performance of the conditions of the said bond has been placed in the possession or custody of the said consular officer or vice-admiralty judge, or of such officer or judge jointly with any other person, the person or persons having the custody of such security shall respectively deal with the same in such manner as the court that adjudicates on the bond directs.

Power of High Court of Admiralty to enforce bonds.

493. The said High Court of Admiralty shall have power to enforce any bond given in pursuance of this Act in any vice-admiralty court in any part of Her Majesty's dominions; and all courts in Scotland, Ireland, and the islands of Jersey, Guernsey, Alderney, Sark, and Man exercising admiralty jurisdiction shall, upon application, aid and assist the High Court of Admiralty in enforcing the said bonds.

Saving clause.

494. Any such salvor as aforesaid of any ship, cargo, or property who elects not to proceed under this Act shall have no power to detain the said ship, cargo, or property, but may proceed otherwise for the enforcement of his salvage claim as if this Act had not been passed; and nothing in this Act contained shall abridge or affect the rights of salvors, except in the cases by it provided for.

Documents free from duty.

495. All bonds, statements, agreements, and other documents made or executed in pursuance of the Eighth Part of this Act shall, if so made or executed out of the United Kingdom, be exempt from stamp duty.

Punishment for forgery and false representations.

496. Every person who, in any proceeding under provisions contained in the Eighth Part of this Act relating to salvage by Her Majesty's ships, forges, assists in forging, or procures to be forged, fraudulently alters, assists in fraudulently altering, or procures to be fraudulently altered, any document, and every

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person who in any such proceeding puts off or makes use of any such forged or altered document, knowing the same to be so forged or altered, or who in any such proceeding gives or makes, or assists in giving or making, or procures to be given or made, any false evidence or representation, knowing the same, to be false, shall be punishable with imprisonment, with or without hard labour, for any period not exceeding two years, or, if summarily prosecuted and convicted, by imprisonment, with or without hard labour, for any period not exceeding six months.

Salvage General.

Voluntary agreement may be made which shall have the same effect as the bond above mentioned.

497. Whenever services for which salvage is claimed are rendered either by the commander or crew or part of the crew of any of Her Majesty's ships, or of any other ship, and the salvor voluntarily agrees to abandon his lien upon the ship, cargo, and property alleged to be salved, upon the master or other person in charge thereof entering into a written agreement attested by two witnesses to abide the decision of the said High Court of Admiralty or of any vice-admiralty court, and thereby giving security in that behalf to such amount as may be agreed on by the parties to the said agreement, such agreement shall bind the said ship and the said cargo and the freight payable therefor respectively, and the respective owners of the said ship, freight, and cargo for the time being, and their respective heirs, executors, and administrators, for the salvage which may be adjudged to be payable in respect of the said ship, cargo, and freight respectively to the extent of the security so given as aforesaid, and may be adjudicated upon and enforced in the same manner as the bonds provided for by the Eighth Part of this Act, in the case of detention for salvage services rendered by Her Majesty's ships; and upon such agreement being made the salvor and the master or other person in charge as aforesaid shall respectively make such statements as are herein-before required to be made by them in case of a bond being given, except that such statements need not be made upon oath; and the salvor shall, as soon as practicable, transmit the said agreement and the said statements to the Court in which the said agreement is to be adjudicated upon.

See s. 486, p. 407, for the statements required to be made and for the form of a salvage bond. For agreements as to the amount of salvage to be paid in extraordinary cases, see s. 460, p. 385.

Lien for salvage.

Salvage confers a maritime lien on the salvors against the ship, freight, and property saved (*t*). The whole value of the ship, freight, and cargo should be before the Court, and each must pay its own share, neither can be made liable for salvage due from the others (*u*). Salvors who board a legal derelict (see under s. 467, p. 392) are entitled to keep possession of her, and bring her into port even as against the master and crew though it is not usually expedient to enforce the right in the latter case (*x*).

Priority of lien.

The lien for salvage ranks before any other lien which attached before the services were rendered, on the same principle that a prior bottomry bond is postponed to a subsequent one (see p. 100). viz., that without the latter assistance, the property would have been entirely lost to all concerned in it (*y*). It is not necessary that salvors should continue in possession of the property in order to preserve their rights over it (*z*), their right continues until determined by some competent Court (*a*). Seamen are not to give up their lien for salvage except in certain cases (see under sec. 182, p. 167). As to maritime liens and their priority *inter se*, see Part IX., p. 418.

Possession not necessary.

Apportionment of Salvage.

Powers for court having Admiralty jurisdiction to apportion salvage.

498. Whenever the aggregate amount of salvage payable in respect of salvage services rendered in the United Kingdom has been finally ascertained, and exceeds 200*l.*, and whenever the aggregate amount of salvage payable in respect of salvage services rendered elsewhere has been finally ascertained, whatever such amount may be, then if any delay or dispute arises as to the apportionment thereof, any court having Admiralty jurisdiction may cause the same to be apportioned amongst the persons entitled thereto in such manner as it thinks just; and may for that purpose, if it thinks fit, appoint any person to carry such apportionment into effect, and may compel any person in whose hands or under whose control such amount may be to distribute the same, or to bring the same into court, to be there dealt with as the court may direct, and may for the purposes aforesaid issue such monitions or other processes as it thinks fit.

(*t*) Williams & Bruce, Admiralty Practice (ed. 1868), 143; *Harford* v. *Jones*, 1 Ld. Raym. 393; *Baring* v. *Day*, 8 East, 57.

(*u*) *The Pyrenee*, Br. & L. 189; *The Westminster*, 1 W. Rob. 233; *The Charlotte Wylie*, 5 Notes of Cas. 6.

(*x*) *The Tritonia*, 5 Notes of Cas. Suppl. iv.; *The Gertrude*, 30 L. J. Ad. 131; *The Orbana*, 1 Spinks, A. & E. 165.

(*y*) Williams & Bruce, Admiralty Practice (ed. 1868), 148; *Cargo ex Galam*, Br. & L. 181.

(*z*) *The Maria*, Edw. 175; *The Bee*, Ware (Amer. Rep.), 332.

(*a*) *The Blenden Hall*, 1 Dods. Ad. 414.

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As to apportionment by a receiver, when the amount is less than 200*l*., (see s. 467, p. 391).

Damage or loss to salving vessel.

When there has been any loss of profit, or damage to the salving vessel, the owner is entitled to deduct the amount of such loss or damage from the whole sum awarded, and retain it before any distribution of the rest is made (*b*). Besides this, the owner frequently participates in the actual salvage money, but he has hardly ever been allowed more than a moiety (*c*). The distribution, however, is entirely in the discretion of the Court, the circumstances of each case, and the services performed by individuals, are all taken into account, and the reward given accordingly.

Court has entire discretion.

No fixed rules as to amount.

No fixed rules can be laid down as to what any class of persons will receive. The master, upon whom the responsibility falls, gets a good deal more than the crew, especially if his ship carries mails or passengers (*d*). The mate is also liberally rewarded if his duties have become more onerous through his salvage services (*e*); and he may get as much or more than the master, if he has chiefly contributed to the rescue of the vessel (*f*). The rest of the crew generally share the money awarded, in proportion to their wages (*g*), apprentices usually getting two-thirds as much as an able seaman (*h*). If any salvor has specially distinguished himself and materially contributed to the success of the enterprise, he will receive a much higher proportion than those who have only acted according to his directions (*i*). Ordinary persons are rewarded according to what they have done (*k*).

The master.

The mate.

Crew share in proportion to their rating.

Salvor specially distinguished.

Forfeiture of Salvage.

Misconduct.

Salvors may forfeit their remuneration, wholly or in part, by misconduct, or by negligence and incapacity (*l*). If the misconduct is wilful or criminal the whole claim may be forfeited (*m*). Bad faith and intention not to do the whole duty, or to protract, from improper motives, the duration of the service, are acts of wilful misconduct (*n*). So is resisting the employment of a steamer, and making a riot (*o*); and improperly retaining posession of, and dealing with the property salved without regard to the owner's interest, under circumstances of suspected collusion with the owner's agent (*p*). When the owner or master deems that the

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(*b*) *The Spirit of the Age*, Swa. 287.

(*c*) *The Enchantress*, Lush. 96. The owners of steamers get more than those of sailing vessels. *The Palmyra*, 1 Asp. Mar. Law Cas. 182.

(*d*) *The Martin Luther*, Swa. 289; *The Earl Grey*, 3 Hagg. Ad. 363.

(*e*) *The Albion*, 3 Hagg. Ad. 254; *The Caroline*, 2 W. Rob. 124; *The Sir R. Abercrombie*, L. R. 1 P. C. 462.

(*f*) *The Nicolina*, 2 W. Rob. 175; *The Golendrina*, L. R. 1 A. & E. 334.

(*g*) *The Earl Grey*, 3 Hagg. Ad. 364; *The Hope*, 3 Hagg. Ad. 425.

(*h*) *The George Dean*, Swa. 291.

(*i*) H.M.S. *The Thetis*, 3 Hagg. Ad. 14.

(*k*) For instances of Salvage awards, see Pritchard's Admiralty Digest (2nd ed.), II. 839.

(*l*) *The Charles Adolphe*, Swa. 153; *The Atlas*, Lush. 528; *The Cape Packet*, 3 W. Rob. 125; *The Duke of Manchester*, 6 Moo. P. C. 91.

(*m*) *The Cape Packet*, 3 W. Rob. 125.

(*n*) *The Magdalen*, 5 L. T. N. S. 807; 31 L. J. (Ad.) 22.

(*o*) *The Martha*, Swa. 489.

(*p*) *The Lady Worsley*, 2 Spinks, E. & A. 253; *The Bello Corrunes*, 6 Wheaton (Amer. Rep.), 152.

salvors have given sufficient assistance, and dismisses them, they will receive nothing for any assistance they may render after being so dismissed (*q*). Plundering or embezzling any of the cargo will work a forfeiture of all claims (*r*). In short, salvage is a recompense resting essentially upon equitable considerations, and the salvor must present his claims with clean hands (*s*).

Negligence or incapacity.

When persons undertake to perform a salvage service they are bound to exercise ordinary skill and ordinary prudence in its execution, and their negligence may be so extremely gross as to forfeit all claim to salvage (*t*). As a rule error, unless wilful, only diminishes the remuneration (*u*); and in a case where the salving vessel injured the ship she was rescuing, and a cause of damage was instituted by the vessel salved to recover the damage thus occasioned, it was held that the owners of the vessel salved were entitled to recover in the damage cause, and that the salvors were entitled to recover salvage (*x*).

If salvors have brought a ship to a situation of comparative safety, and have given her up to a licensed pilot, they are not prejudiced as to their claim by any injury subsequently happening to her from the negligence of such pilot (*y*).

Delay.

Unnecessary delay in making a claim will sometimes cause it to be dismissed, especially if the amount claimed be small (*z*)

Miscellaneous.

Foreign goods found derelict to be subject to the same duties as on importation.

499. All wreck, being foreign goods brought or coming into the United Kingdom or the Isle of Man, shall be subject to the same duties as if the same were imported into the United Kingdom or the Isle of Man respectively; and if any question arises as to the origin of such goods, they shall be deemed to be the produce of such country as the Commissioners of Customs may upon investigation determine.

In case of wreck of foreign ships, consul general to be deemed agent of owner.

18 & 19 Vict. c. 91, s. 19.—Whenever any articles belonging to or forming part of any foreign ship which has been wrecked on or near the coasts of the United Kingdom, or belonging to or forming part of the cargo thereof, are found on or near such coasts, or are brought into any port in the United Kingdom, the

(*q*) *The Dantzic Packet*, 3 Hagg. Ad. 383; *The Glasgow Packet*, 2 W. Rob. 306.
(*r*) *The Florence*, 16 Jur. 576; *The Dove*, 1 Gall (Amer. Rep.), 585; *The Boston*, 1 Sumner (Amer. Rep.), 328.
(*s*) *American Insurance Co.* v. *Johnson*, 1 Blatch & How (Amer. Rep.), 30; *The Schooner Boston*, 1 Sumner (Amer. Rep.), 341.
(*t*) *The Cape Packet*, 3 W. Rob. 125; *The Houthandel*, 1 Spinks, E. & A. 27; *The Atlas*, Lush. 528.
(*u*) *The Rosalie*, 1 Spinks, E. & A. 191; *The Magdalen*, 5 L. T. N. S. 807; *The Thetis*, L. R. 2 A. & E. 365.
(*x*) *The C. S. Butler*, L. R. 4 A. & E. 178; 2 Asp. Mar. Law Cas. 239.
(*y*) *The Bomarsund*, Lush. 77; *The Nellie*, 2 Asp. Mar. Law Cas. 142.
(*z*) *The Swan*, 1 W. Rob. 70; *The Rapid*, 3 Hagg. Ad. 421.

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consul general of the country to which such ship, or, in the case of cargo, to which the owners of such cargo, may have belonged, or any consular officer of such country authorised in that behalf by any treaty or agreement with such country, shall, in the absence of the owner of such ship or articles, and of the master or other agent of the owner, be deemed to be the agent of the owner, so far as relates to the custody and disposal of such articles.

Goods saved from ships wrecked to be forwarded to the ports of their original destination.

500. The Commissioners of Customs and Excise shall permit all goods, wares, and merchandise saved from any ship stranded or wrecked on its homeward voyage to be forwarded to the port of its original destination, and all goods, wares, and merchandise saved from any ship stranded or wrecked on its outward voyage to be returned to the port at which the same were shipped; but such Commissioners are to take security for the due protection of the revenue in respect of such goods, wares, and merchandize.

As to the customs laws now in force, see Part XI., p. 464.

Provision as to certain terms in Scotland.

501. All matters and things that may in pursuance of the Eighth Part of this Act be done by or to any justice or any two justices may in Scotland be done also by or to the sheriff of the county, including the sheriff substitute; and the expression "lord or lady of a manor" shall in the Eighth Part of this Act, so far as regards Scotland, include "heritable proprietor duly infeft."

PART IX.

LIABILITY OF SHIPOWNERS.

Application.

Application of Part IX. of Act.

502. The Ninth Part of this Act shall apply to the whole of Her Majesty's dominions.

This part of the Act limits the responsibility of owners in respect of damage done by their vessels. Owners of ships are, however, subject to other claims that may come into existence while their ships are performing a voyage. These are claims arising from maritime liens, from repairs

executed for the ship, from necessaries supplied to her, and from general average. (With regard to a shipowner's liability in respect of seaworthiness, see under sec. 291, p. 244 *et seq.*)

§ 502.

Maritime Liens.

Nature of liens.

Ships being property of a peculiar nature, and being for long periods out of the control of their owners, the maritime law in some cases allows persons who have dealings with a ship certain rights against the ship itself irrespective of its owners. These rights are called maritime liens, and in the English Admiralty Courts claims for seamen's wages, pilotage, towage, salvage, damage by collision, bottomry, and respondentia, confer a maritime lien, and such claims may be enforced by proceedings *in rem*,—that is, against the ship itself. A maritime lien does not include or require possession. The word lien is used in maritime law not in the sense in which it is understood in the Courts of Common Law, in which case there is no lien where there is no possession, actual or constructive; but it is used to express, as if by analogy, the nature of a claim, which neither presupposes nor originates in possession (*a*). Such a lien does not transfer the property in the ship, but is a claim or privilege upon it, to be carried into effect by legal process (*b*), which process is explained by Story, J., to be a proceeding *in rem*, and whenever a lien or claim of this sort exists, then the Admiralty Courts can enforce it by proceedings *in rem*, and indeed are the only courts competent so to enforce it (*c*). In all cases where a proceeding *in rem* is the proper course, there a maritime lien exists.

Possession not necessary.

Enforced by proceedings *in rem*.

Lien travels with the ship.

The lien travels with the ship into whossoever possession it may come. It is something which adheres to the ship, from the time that the facts happened which gave it, and it continues binding on her until it is discharged, either by being satisfied or from the laches of the owner, or in any other way by which, by law, it may be discharged (*d*). It is not defeasible within a reasonable time by a mere change of ownership of the vessel (*e*). The purchaser of a vessel should therefore ascertain what liens may exist on her, and should take a covenant of indemnity from the vendor against all such claims (*f*). These liens are allowed for the general benefit of navigation and trade, and many of the common mercantile transactions could not be carried on without them (*g*).

Purchasers should ascertain liens.

No lien when security was personal.

If there is evidence that at the time when the claim first arose, it was the intention of the parties that the security should be purely personal, for instance, if bills of exchange be given, no maritime lien will then arise, for the lien might thus remain in the hands of one person, while the negotiable security got into the hands of another (*h*).

(*a*) *The Bold Buccleugh: Harmer* v. *Bell*, 7 Moo. P. C. 284.

(*b*) Abbott on Shipping (11th ed.) 619. Mr. Maclachlan objects to this use of the word privilege, as being a term confined to the civil law. Maclachlan on Shipping (2nd ed.), 65, note 1.

(*c*) *The Brig Nestor*, 1 Sumner (Amer. Rep.), 78.

(*d*) *The Two Ellens*, L. R. 4 P. C. 169; *The Bold Buccleugh*, 7 Moo. P. C. 284.

(*e*) *The Dowthorpe*, 2 W. Rob. 73.

(*f*) *The Nymph*, Swa. 86.

(*g*) *The Brig Nestor*, 1 Sumner (Amer. Rep.), 84.

(*h*) *The William Money*, 2 Hagg. Ad. 136, and see, as to Bottomry specially Part III., p. 98; *The Brig Nestor*, 1 Sumner (Amer. Rep.), 87.

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Remedy *in rem* confined to ship and freight.

The remedy afforded by proceedings *in rem* cannot extend beyond the property proceeded against. It is an election on the part of the claimant to have his claim satisfied out of the proceeds of the ship and freight, and in such proceedings, the owners cannot be made responsible, except for costs, beyond the value of the ship and freight (*i*). But when a remedy *in rem* and *in personam* both exist, if a person has resorted to one of them, and does not thereby get fully satisfied, he is not precluded from resorting to the other (*k*).

Priority of Liens.

Diligence gives priority.

When maritime liens exist on a ship, the Court encourages suitors in actively enforcing their remedy, and gives preference to the party who is first in possession of a decree of the Court (*l*). Thus, where the owners of a vessel and *part* of the cargo lost in a collision, sued the damaging vessel and obtained a decree condemning her, and on the same day that the decree was pronounced, the owners of the *rest* of the cargo sued the same vessel, it was held that the Court had no jurisdiction to decree a rateable distribution, and thereby take away the priority of the *prior petens* (*m*).

Inverse order of date followed.

When each of the several claimants has shown an equal diligence in asserting his claim, the general rule then is, that unless any of the claims arise from damage caused by the ship, the last is satisfied first, and so on in an order inverse to that in which they arose (*n*). Claims for damage are satisfied in the direct order of their date. As a rule, they take precedence of other liens, especially of those arising *ex contractu*, and absorb in the event of the property proving insufficient to meet all demands, the liens of wages, towage, pilotage, and bottomry (*n*).

Person damaged often has no personal remedy.

He has no option.

One reason for this is, that in many cases where the damage has been done by a foreign vessel, the owner of the ship injured has no remedy except by proceeding *in rem* against the foreign vessel, whereas claims such as those for wages, towage, pilotage, &c., may also be sued for against the owner personally. Another reason is that the person suffering the damage has no option, no caution to exercise, whereas a creditor on bottomry has (*o*).

Seamen's wages rank next to damage.

Master's wages.

After liens for damage, seamen's wages are first satisfied, and this is within the general rule, because the seaman's services continue up to the conclusion of the voyage (*p*). "As long as a plank remains," said Lord Stowell, "the sailor is entitled to the proceeds as security for his wages" (*q*). The master's wages come next to those of the seamen (*r*),

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Bills of exchange may be given as *collateral* security, with a bottomry bond. *The Nelson*, 1 Hagg. Ad. 169.

(*i*) Williams & Bruce, Admiralty Practice (ed. 1868), 67; *The Europa*, Br. & L. 210; *The John Dunn*, 1 W. Rob. 159; *The Victor*, Lush. 72; *The Volant*, 1 W. Rob. 388; *The Wild Ranger*, Br. & L. 84.

(*k*) *The Orient*, L. R. 3 P. C. 702.

(*l*) *The William F. Safford*, Lush. 71.

(*m*) *The Saracen*, *Barnard* v. *Hyne*, 6 Moo. P. C. 56.

(*n*) Abbott on Shipping (11th ed.), 619; Williams & Bruce, Admiralty Practice (ed. 1868), 66; *The Benares*, 7 No. of Ca., Suppl. L.; *The Linda Flor*, 4 Jur. N. S. 172.

(*o*) *The Aline*, 1 W. Rob, 118.

(*p*) *The William F. Safford*, Lush. 69; *The Union*, Lush. 137.

(*q*) *The Madonna d'Idra*, 1 Dods. Ad. 40.

(*r*) *The Salacia*, Lush. 545.

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whether he is a part owner of the vessel or not (*s*). But if, during the voyage, the master has made himself personally liable, in such ways as binding himself in a bottomry bond, &c., claims so arising are preferred to those for his wages (*t*).

Salvage.

According to the general rule given above, the lien for salvage ranks before the liens that attached previously to the rendering of the services (*u*).

Bottomry.

In the case of bottomry, if the holder of the bond has advanced his money subsequently to the ship being damaged, his claim does not give way to that for damage. His advance of money has helped to improve the security of the damage claimant, and therefore it would not be just to exclude the lender from participating in it (*x*). Bottomry is postponed to subsequent salvage towage and pilotage (*y*).

Lex fori.

The question of the precedence of maritime liens must be determined by the *lex fori* (*z*), and the Court, in the exercise of its equitable jurisdiction will marshal the assets in its control so as best to meet the just claims of plaintiffs, and protect the interests of defendants (*a*).

Repairs and Necessaries.

Master's authority to pledge owner's credit.

The master is appointed by the owners for the purpose of conducting the navigation of the ship to a favourable termination, and there is vested in him, as incident to that employment, an implied authority to bind the owners for all that is necessary to that end (*b*). He may pledge the owners' credit for repairs and necessaries whenever the power of communication with them, or with any agent of theirs, is not correspondent with the existing necessity (*c*). That is, if he can inform the owners before pledging their credit, he must do so, but if the necessity is so urgent that there is no time for communicating it, or if no means of communication exist, he may then procure the supplies, or cause the repairs to be executed on the owners' credit. If the owners' credit and his own both fail to procure the necessaries, he may then have recourse to bottomry (see Part III. p. 98), but the necessity in such a case must be more stringent, and the Court will inquire closely into all the details of the transaction (*d*).

On failure of credit.

Lord Tenterden's rule.

"The general rule is," said Lord Tenterden, "that the master may

(*s*) *The Feronia*, L. R. 2 A. & E. 65.

(*t*) *The Edward Oliver*, L. R. 1 A. & E. 379; *The Jenny Lind*, L. R. 3 A. & E. 522; *The Darling*, L. R. 2 A. & E. 262; Maclachlan on Shipping (2nd ed.), 652–3.

(*u*) *Cargo ex Galam*, Br. & L. 181.

(*x*) *The Aline*, 1 W. Rob. 120.

(*y*) *The Dowthorpe*, 2 W. Rob. 89.

(*z*) *The Union*, Lush. 137; *Don* v. *Lippman*, 5 Cl. & F. 1; *Harrison* v. *Sterry*, 5 Cranch, Sup. Ct. (Amer. Rep.) 289; Westlake on Private International Law, § 410. Story on Conflict of Laws (7th ed.), § 323, p. 394.

(*a*) Maclachlan on Shipping (2nd ed.), 656.

(*b*) Maclachlan on Shipping (2nd ed.), 131; *Cargo ex Hamburg, Duranty* v. *Hart*, 2 Moo. P. C. (N. S.) 321; Parsons on Shipping (ed. 1868), II. 8.

(*c*) *Wallace* v. *Fielden, The Oriental*, 7 Moo. P. C. 410; *Arthur* v. *Barton*, 6 M. & W. 138; *Jones* v. *Simons*, 2 Q. B. 425.

(*d*) *The Hersey*, 3 Hagg. Ad. 404; *Wallace* v. *Fielden, The Oriental*, 7 Moo. P. C. 409; *Pratt* v. *Reed*, 19 Howard (Amer. Rep.), 359.

§ 502. bind his owners for necessary repairs done or supplies provided for the ship. It was contended at the trial that this liability of the owners was confined to what was absolutely necessary. I think that rule too narrow, for it would be extremely difficult to decide, and impossible in many cases, what is *absolutely* necessary. If, however, the jury are to inquire only what is necessary, there is no better rule to ascertain that than by considering what a prudent man, if present, would do under the circumstances in which the agent in his absence is called upon to act. I am of opinion that whatever is fit and proper for the service on which a vessel is engaged, whatever the owner of that vessel, as a prudent man, would have ordered if present at the time, comes within the meaning of the term 'necessaries,' as applied to those repairs done, or things provided for the ship, by order of the master, for which the owners are liable" (*e*).

Necessaries are what a prudent man would procure.

Mr. Justice Story's rule.

"Necessary repairs," said Story, J., "mean such as are reasonably fit and proper for the ship under the circumstances, and not merely such as are absolutely indispensable for the safety of the ship or the accomplishment of the voyage" (*f*).

Money borrowed.

The master has also authority to borrow money on the owner's credit, for the purpose of procuring necessaries, but only in those cases where he might pledge that credit for the repairs themselves (*g*). The Court must be satisfied that the repairs were necessary, and that the money was advanced *bonâ fide* for the purpose of procuring them (*h*). There seems to be no distinction between necessaries for the ship and necessaries for the voyage (*i*).

Civil law gives a lien.

No maritime lien in England.

According to the civil law and the maritime law, the person who executes repairs or supplies necessaries to a vessel, has a maritime lien upon her (*k*). This, however, is not the case in England, and the material man, as such a person is called, has only a common law possessory lien for his money (*l*). He can proceed either against the master or against the owners, unless he supplied the necessaries expressly on the personal credit of one or the other (*m*). In order to enforce his lien against the ship, he must retain possession of her; but if he does so, he must bear the expense of keeping her, as he cannot add anything in the nature of rent to the amount of his debt, because he only keeps the ship for his own benefit (*n*).

Supplies to foreign

If, however, necessaries are supplied to a foreign ship, the material man may enforce his claim by proceedings *in rem*, under 3 & 4 Vic.

(*e*) *Webster* v. *Seekamp*, 4 B. & Ald. 352; *The Riga*, L. R. 3 A. & E. 522.

(*f*) *The Fortitude*, 3 Sumner (Amer. Rep.), 237; *The Aurora*, 1 Wheaton (Amer. Rep.), 96.

(*g*) *Beldon* v. *Campbell*, 6 Ex. 890; *The Karnak*, L. R. 2 A. & E. 303; L. R. 2 P. C. 513; *Davis* v. *Child*, Davies (Amer. Rep.), 75; *Thomas* v. *Osborn*, 19 Howard (Amer. Rep.), 22.

(*h*) *The Sophie*, 1 W. Rob. 368.

(*i*) *The Riga*, L. R. 3 A. & E. 522.

(*k*) Dig. Lib. 42, 5, 26. *Per* Story, J., in *The Brig Nestor*, 1 Sumner (Amer. Rep.), 79.

(*l*) *Justin* v. *Ballam*, 2 Ld. Raym. 805; *The Zodiac*, 1 Hagg. Ad. 325; *The Neptune*, 3 Knapp, P. C. 94.

(*m*) *Farmer* v. *Davies*, 1 T. R. 108; *Thompson* v. *Finden*, 4 C & P. 159.

(*n*) *Somes* v. *British Empire Insurance Co.*, 8 H. L. C. 338; 30 L. J. Q. B. 229.

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c. 65, s. 6, because by that section the Admiralty Court has jurisdiction to decide all claims or demands whatsoever, for necessaries supplied to any foreign ship, and to enforce payment thereof.

vessels confer right to proceed *in rem*.

By the Admiralty Court Act, 1861 (24 Vic. c. 10), s. 5, it is enacted that that Court shall have jurisdiction over all claims for necessaries, *unless at the time of the institution of the cause* any owner or part owner is domiciled in England or Wales. This created a doubt as to whether the remedy *in rem* given by the previous Act in the case of repairs executed on foreign vessels, was not taken away if the foreign vessel was sold to a British owner, who, *at the time of the institution of the cause*, was domiciled in England. It has, however, been held that the material man may still in such a case take proceedings *in rem*. "It is not to be presumed," said Dr. Lushington, "that the Legislature, having given a remedy tantamount to the creation of a maritime lien, would, without some strong apparent reason, pass an enactment most materially impairing the efficiency of that remedy" (*o*).

It has been laid down in general terms that the Admiralty Court will entertain claims for necessaries only in cases where the owners would be liable at common law (*p*).

General Average.

Definition.

General average is the general contribution that is to be made by all parties toward a loss sustained by some for the benefit of all (*q*).

Particular average.

Simple or particular average is not a very accurate expression; for it means damage incurred by, or for one part of the concern, which that part must bear alone. The loss of an anchor or cable, the starting of a plank, are matters of simple or particular average, for which the ship alone is liable. Should a cargo of wine turn sour on the voyage, it would be a matter of particular average, which the goods alone must bear.

General average.

General average is that loss to which contribution must be made by both ship and cargo, the loss, or expense which the loss creates, being incurred for the common benefit of both (*r*).

Manner of incurring the loss.

In order that there should be a general average contribution, the act which has caused the loss must be done intentionally, the mind and agency of man must be employed to bring it about (*s*). Thus, any injury which goods may receive from purely natural causes, such as their being burnt or soaked with water, will not entitle the owners to general average.

Species of loss.

But any loss which arises in consequence of extraordinary sacrifices made, or expenses incurred for the preservation of the ship and cargo, comes within the definition (*t*).

Repairs.

Repairs, although necessary to the ship, do not give the owner any claim to general average, because it is part of

(*o*) *The Ella A. Clark*, Br. & L. 32; *The Turliani*, 2 Asp. Mar. Law Cas. 603; *The Onni*, Lush. 154; *The Wataga*, Swa. 165; *The Anna*, 1 P. D. (C. A.) 253.

(*p*) Williams & Bruce, Admiralty Practice (ed. 1868), 157; *The West Friesland*, Swa. 454.

(*q*) Abbott on Shipping (11th ed.), 521.

(*r*) *The Copenhagen*, 1 C. Rob. 293; *Walthew* v. *Mavrojani*, L. R. 5 Ex. 124.

(*s*) Abbott on Shipping (11th ed.), 522; *Sims* v. *Gurney*, 4 Binn (Amer. Rep.), 524; *Peters* v. *Warren Insurance Co.*, 1 Story (Amer. Rep.), 468.

(*t*) *Birkley* v. *Presgrave*, 1 East, 228; Lowndes on General Average, (2nd ed.) 1.

§ 502. the owner's contract that the ship should be fit to perform the voyage (*u*), and he ought to furnish the captain with funds for repairs (*w*). But if the damage that necessitates the repairs has been occasioned voluntarily in order that some danger may be avoided, as, if the deck or sides are cut to facilitate a jettison of cargo, the cost of such repairs must be contributed to by the owners of the cargo (*y*); so must the cost of port and pilotage dues, or of extraordinary assistance, when incurred to avoid extraordinary danger (*z*).

The act must not be within the master's ordinary authority.

The act that occasions the loss must be something out of the ordinary authority of the master, as a common sea risk gives no claim to general average (*a*). The fundamental principle of general average is to be found in the rule of law, that the captain of a ship though under ordinary circumstances merely the servant and agent of the shipowner, is upon occasions of unprovided necessity resulting from the dangers of navigation, endowed with the character of agent for the cargo as well as the ship; so that what he does in that capacity for the common safety of all, must be regarded as done by the joint authority of all, and consequently at their common expense (*b*).

Deck cargoes.

The sacrifice must not only be voluntary and intended, but not in any degree occasioned by the fault of the owner (*c*). On this ground the American Courts in some cases refuse to allow any contribution for goods jettisoned, if the goods have been carried on deck (*d*); but it would seem that average will be due if it is shown by custom or otherwise that it was proper and justifiable to carry the goods on deck (*e*).

Safety of property.

In general average it is the safety of the property and not of the voyage which constitutes the true foundation of a claim. If the whole cargo is thrown overboard to insure the safety of the ship, the voyage may be lost, but the ship must contribute to the jettison. And if the ship is voluntarily run on shore in order to escape a storm or enemy, it has been held by Story, J., that general average is due from the cargo saved, whether the ship becomes a total loss or not (*f*).

Average claims are debts.

Claims for general average are simply debts, and give no maritime lien on the vessel (*g*); they are not within the exclusive cognisance of the Court of Admiralty (*h*).

(*u*) *Powell* v. *Gudgeon*, 5 M. & S. 431.
(*w*) *Sarquy* v. *Hobson*, 4 Bing. 131.
(*y*) Abbott on Shipping (11th ed.), 528.
(*z*) *Birkley* v. *Presgrave*, 1 East, 228.
(*a*) *Covington* v. *Roberts*, 2 N. R. 378; *Power* v. *Whitmore*, 4 M. & S. 141; *Wilson* v. *Bank of Victoria*, L. R. 2 Q. B. 203.
(*b*) Lowndes on General Average (2nd ed.), 14, 15; *Cargo ex Hamburg*, *Duranty* v. *Hart*, 2 Moo. P. C. (N. S.) 321.
(*c*) Parsons on Shipping (ed. 1869), I. 352.
(*d*) *Lenox* v. *United Insurance Co.*, 3 Johns. Cas. 2nd ed. (Amer. Rep.) 178—5; *Smith* v. *Wright*, 1 Caines (Amer. Rep.), 43.
(*e*) *Gould* v. *Oliver*, 4 Bing. N. C. 134; *Milward* v. *Hibbert*, 2 Gale & D. 142; *Da Costa* v. *Edmunds*, 4 Camp. 142; *Brown* v. *Cornwell*, 1 Root (Amer. Rep.), 60.
(*f*) *Columbian Insurance Co.* v. *Ashby*, 13 Pet. (Amer. Rep.) 331; *Caze* v. *Reilly*, 3 Wash. C. C. (Amer. Rep.) 298.
(*g*) *The North Star*, Lush. 50.
(*h*) *The Augusta*, 1 Dods. Ad. 283.

Limitation of Liability as Carriers. **§ 503.**

503. No owner of any sea-going ship or share therein shall be liable to make good any loss or damage that may happen without his actual fault or privity of or to any of the following things (that is to say), Owner not liable in respect of certain articles.

(1.) Of or to any goods, merchandise, or other things whatsoever taken in or put on board any such ship, by reason of any fire happening on board such ship, Fire.

(2.) Of or to any gold, silver, diamonds, watches, jewels, or precious stones taken in or put on board any such ship, by reason of any robbery, embezzlement, making away with or secreting thereof, unless the owner or shipper thereof has, at the time of shipping the same, inserted in his bills of lading or otherwise declared in writing to the master or owner of such ship the true nature and value of such articles, Valuables, unless value stated.

To any extent whatever.

Ship owners who carry goods by sea are not subject to the Carriers Act (11 Geo. IV. & 1 Wm. IV. c. 68). As a rule, their liability with regard to the goods they carry is limited and ascertained by charter party or bill of lading. But if this is not done, the liability will then be determined by the mode in which the ship is employed, that is, whether the owner holds himself out as a common carrier, or whether he only uses his vessel as a private ship. There is a great distinction between these two modes of employing ships. A common carrier has been defined to be "one who offers to carry goods for any person between certain termini, and on a certain route." "He is bound to carry for all who tender to him goods and the price of carriage, and insures these goods against all loss but that arising from the act of God or the public enemy, and has a lien on the goods for the price of the carriage." "If either of these elements is wanting, we say the carrier is not a common carrier either by land or water. If we are right in this no vessel will be a common carrier that does not ply [regularly, alone, or in connection with others on some definite route, or between two certain termini" (*i*). The latter part of this rule has not been strictly carried out in our Courts. In a recent case in the Exchequer Chamber, the defendant, a barge owner, let out his vessels for conveyance of goods to any customers who applied to him. The vessels did not ply between any fixed termini, but the customer fixed in each particular case the points of arrival and departure. The defendant was held to be a common carrier and liable as such (*k*). In commenting on this case, Cockburn, C. J., said, "I cannot help seeing the difficulty which stands in the way of the ruling in that

Shipowners not subject to Carrier's Act.

Common carriers and private ships.

(*i*) Parsons on Shipping (ed. 1869), I. 245, quoted with approval in *Nugent* v. *Smith*, 1 C. P. D. 429.

(*k*) *Liver Alkali Co.* v. *Johnson*, L. R. 9 Ex. 338.

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case, namely, that it is essential to the character of a common carrier that he is bound to carry the goods of all persons applying to him, while it has never been held, and, as it seems to me, could not be held, that a person who lets out vessels or vehicles to individual customers on their application, was liable to an action for refusing the use of such vessel or vehicle if required to furnish it" (*l*).

Private ship.

"If the owner of a ship," says Story, "employs it on his own account generally, or if he lets the tonnage with a small exception to a single person, and then, for the accommodation of a particular individual, he takes goods on board for freight, not receiving them for persons in general, he will not be deemed a common carrier but a mere private carrier" (*m*); and he will therefore not be subject to the strict liability which the law imposes on common carriers (*n*).

Liability of common carrier.

Act of God defined.

When it is established that a shipowner is a common carrier of goods, as has already been said, he insures against all loss but that arising from the "act of God," or from the "public enemy." It is remarkable that until quite recently there has been no judicial exposition of the meaning of the term "act of God" as regards the degree of care to be applied by the carrier, in order to entitle himself to the benefit of its protection. Cockburn, C. J., has now laid the rule, that "all that can be required of the carrier is, that he shall do all that is reasonably and practically possible to ensure the safety of the goods. If he uses all known means to which prudent and experienced carriers ordinarily have recourse, he does all that can be reasonably required of him; and if, under such circumstances, he is overpowered by storm or other natural agency, he is within the rule which gives immunity from the effects of such *vis major* as the act of God. I find no authority for saying that the *vis major* must be such as 'no amount of human care or skill could have resisted,' or the injury such as 'no human ability could have prevented'" (*o*). In the same case, Mellish, L. J., said, "in order to prove that the cause of loss was irresistible, it is not necessary to prove that it was absolutely impossible for the carrier to prevent it, but it is sufficient to prove that by no reasonable precaution under the circumstances could it have been prevented" (*p*). If the ship is employed as a private ship, the liability will then depend on the nature of the agreement with the owner of the goods.

Sections 504 *and* 505 *are repealed by* 25 & 26 Vict. c. 63, s. 2.

Limitation of Liability for Damage to Life or Goods.

Shipowners' liability limited.

25 & 26 Vict. c. 63, s. 54.—The owners of any ship, whether British or foreign, shall not, in cases where all or any of the following events occur without their actual fault or privity, that is to say,

Loss of life.

(1.) Where any loss of life or personal injury is caused to any person being carried in such ship;

(*l*) *Nugent* v. *Smith*, 1 C. P. D. 433.
(*m*) Story on Bailments, s. 501. See also Angell on Carriers, s. 89.
(*n*) *Nugent* v. *Smith*, 1 C. P. D. 434.
(*o*) *Nugent* v. *Smith*, 1 C. P. D. 437.
(*p*) *Ib.* p. 441.

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(2.) Where any damage or loss is caused to any goods, merchandise, or other things whatsoever on board any such ship ; Damage to goods.

(3.) Where any loss of life or personal injury is by reason of the improper navigation of such ship as aforesaid caused to any person carried in any other ship or boat ; Loss of life in other ship.

(4.) Where any loss or damage is by reason of the improper navigation of such ship as aforesaid caused to any other ship or boat, or to any goods, merchandise, or other things whatsoever on board any other ship or boat ; Damage to goods in other ship.

be answerable in damages in respect of loss of life or personal injury, either alone or together with loss or damage to ships, boats, goods, merchandise, or other things, to an aggregate amount exceeding fifteen pounds for each ton of their ship's tonnage ; nor in respect of loss or damage to ships, goods, merchandise, or other things, whether there be in addition loss of life or personal injury or not, to an aggregate amount exceeding eight pounds for each ton of the ship's tonnage ; such tonnage to be the registered tonnage in the case of sailing ships, and in the case of steam ships the gross tonnage without deduction on account of engine room : Amount of liability.

In the case of any foreign ship which has been or can be measured according to British law, the tonnage as ascertained by such measurement shall, for the purposes of this section, be deemed to be the tonnage of such ship : Foreign ships.

In the case of any foreign ship which has not been and cannot be measured under British law, the Surveyor General of tonnage in the United Kingdom, and the chief measuring officer in any British possession abroad, shall, on receiving from or by direction of the Court hearing the case such evidence concerning the dimensions of the ship as it may be found practicable to furnish, give a certificate under his hand, stating what would in his opinion have been the tonnage of such ship if she had been duly measured according to British law, and the tonnage so stated in such certificate shall, for the purposes of this section, be deemed to be the tonnage of such ship.

The benefit of limited liability conferred by this section can be claimed by any vessel, whether British or foreign, and whether the place of the collision is within or without British jurisdiction ; nor is it necessary that any one claiming the limitation should begin by acknowledging that his vessel is in fault for the collision (*i*). Part-owners of a ship are not partners, and hence the error or misconduct of one part-owner will not forfeit the right of his co-owners to limited liability (*k*). Limitation may be claimed by any ship. Part-owners not partners.

(*i*) *The Amalia*, Br. & L. 151, 8 L. T. N. S. (P. C.), 805 ; 1 Moo. P. C. N. S. 471 ; *The Sisters*, 32 L. T. N. S. 837.

(*k*) *The Spirit of the Ocean*, 34 L. J. Ad. 74 ; 12 L. T. N. S. 239.

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If a master is a part-owner, and a collision occurs when he is not on deck, but without his being in any way to blame for it, the fact of his being on board is not in itself sufficient to show that it occurred with his "fault or privity," or for charging the other owners with blame (*l*).

Lord Campbell's Act.

Lord Campbell's Act (*m*), which makes persons who cause loss of life liable to any amount which a jury may assess as the value of the life, is not repealed by the Merchant Shipping Acts. These Acts only modify the liability which attached to shipowners under Lord Campbell's Act (*n*).

Liability of cargo.

The cargo laden on board the vessel that has caused the collision is in no case liable to be sued for damage (*o*), all that the owner can be compelled to pay is the freight due from him to the owner of the ship in fault; the cargo must be released when this is paid into Court (*p*). (As to collisions generally, see under sec. 294, p. 258.)

It makes no difference whether the ship causing the damage be sunk or not, the owner's liability is the same in any case (*q*), and if a shipowner is also a carrier by land, he does not thereby lose the benefit of this statute in respect of damage occurring on the sea (*r*).

Interest on limited amount.

The owners of a ship who claim this limitation of liability are liable to pay interest on the limited amount from the date of the collision (*s*).

Limitation of invalidity of insurances.

25 & 26 Vict. c. 63, s. 55.—Insurances effected against any or all of the events enumerated in the section last preceding, and occurring without such actual fault or privity as therein mentioned, shall not be invalid by reason of the nature of the risk.

Provision for separate losses.

506. The owner of every sea-going ship or share therein shall be liable in respect of every such loss of life, personal injury, loss of or damage to goods as aforesaid arising on distinct occasions to the same extent as if no other loss, injury, or damage had arisen.

Proof of passengers on board lost ship.

25 & 26 Vict. c. 63, s. 56.—In any proceeding under the 506th section of the Principal Act or any Act amending the same against the owner of any ship or share therein in respect of loss of life, the master's list or the duplicate list of passengers delivered to the proper officer of Customs under the 16th section of "The Passengers' Act, 1855," shall, in the absence of proof to the contrary, be sufficient proof that the persons

(*l*) *The Obey*, L. R. 1 A. & E. 102.
(*m*) 9 & 10 Vict. c. 93.
(*n*) *Glaholm* v. *Barker*, L. R. 1 Ch. 228.
(*o*) *The Victor*, Lush. 72.
(*p*) *The Leo*, Lush. 444.
(*q*) *The Normandy*, 23 L. T. N. S. 631.
(*r*) *London and South-Western Railway Co.* v. *James*, L. R. 8 Ch. 241; 21 W. R. 151; *Le Conteur* v. *London and South-Western Railway Co.*, L. R. 1 Q. B. 54.
(*s*) *The Northumbria*, L. R. 3 A. & E. 6; *Smith* v. *Kirby*, 1 Q. B. D. 131.

in respect of whose death any such prosecution or proceeding is instituted were passengers on board such ship at the time of their deaths.

Section 506 must be read in connection with sec. 54 of the Merchant Shipping Act of 1862 (see under sec. 505, p. 424). A steamer that was improperly navigated caused damage to one ship, and immediately afterwards ran into and sank a tug that was near. It was held that the whole damage so caused to both vessels and their cargoes was caused substantially at the same time, and on the same occasion, and as no lives had been lost or persons injured, the owner was entitled to have his liability limited to £8 a ton (*t*).

Damaging two ships at once.

Mode of Procedure.

507. Whenever any such liability as aforesaid has been or is alleged to have been incurred in respect of loss of life or personal injury, the Board of Trade may, in its discretion, after giving not less than three days notice by post or otherwise to the party to be made defendant or defender, by warrant sealed with the seal of such board or signed by one of its secretaries or assistant secretaries, require the sheriff having jurisdiction over any place in the United Kingdom to summon a jury at a time and place to be specified in such warrant for the purpose of determining the following question ; (that is to say,)

In case of loss of life or personal injury, Board of Trade may direct proceedings.

The number, names, and descriptions of all persons killed or injured by reason of any wrongful act, neglect, or default ;

Persons injured.

And upon the receipt of such warrant the sheriff shall summon a jury of twenty-four indifferent persons, duly qualified to act as common jurymen in the superior courts, to meet at such time and place as aforesaid.

Jury.

508. If either party to the inquiry desire any such question as aforesaid to be tried before a special jury, such question shall be so tried, provided that notice of such desire, if coming from the other party, is given to the Board of Trade before it has issued its warrant to the sheriff ; and for that purpose the Board of Trade shall, by its warrant to the sheriff, require him to nominate a special jury for such trial ; and thereupon the sheriff shall, as soon as conveniently may be after the receipt by him of such warrant, summon both the parties to appear before him by themselves or their attornies or agents at some

Either party may require question to be tried by a special jury.

(*t*) *The Rajah*, L. R. 3 A. & E. 539 ; 27 L. T. N. S. 102.

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convenient time and place appointed by him for the purpose of nominating a special jury; and at the place and time so appointed the sheriff shall proceed to nominate and strike a special jury in the manner in which such juries are required by the laws for the time being in force to be nominated or struck by the proper officers of the superior courts; and the sheriff shall appoint a day, and shall on the day so appointed proceed to reduce the said special jury to the number of twenty, in the manner used and accustomed by the proper officers of the superior courts.

Provisions for conduct of proceedings.

509. The following provisions shall be applicable to the conduct of proceedings by the Board of Trade; (that is to say,)

Board of Trade to be plaintiff, and shipowner defendant.

(1.) The sheriff shall preside at such inquiry, and the Board of Trade shall be deemed in England and Ireland to be the plaintiff, and in Scotland the pursuer, both of which terms are hereinafter included in the term plaintiff, with power to appoint any agent to act on his behalf, and shall have all such rights and privileges as the plaintiff is entitled to in actions at law; and the owner or owners of the ship or ships by whom such liability as last aforesaid is alleged to have been incurred shall be deemed in England and Ireland to be the defendant, and in Scotland the defender, both of which terms are hereinafter included in the term defendant:

Ten days notice.

(2.) Not less than ten days notice of the time and place of the inquiry shall be served by the Board of Trade on the defendant:

Master to represent owner.

(3.) Service on the master of any ship shall be deemed good service on the owner thereof, and the master shall, in respect of the proceedings on such inquiry, be deemed the agent and representative of the owner, with power to appear for him on such inquiry, and to do all matters and things which he might himself have done:

Default of appearance.

(4.) If the defendant does not appear at the time of such inquiry, the same shall be proceeded with as if he had appeared, upon due proof of service of notice having been made on him in pursuance of this Act:

Mode of empannelling jury.

(5.) The empannelling of the jury and the summoning and attendance of witnesses shall be conducted and enforced in England and Ireland in manner provided by the

Lands Clauses Consolidation Act, 1845, in cases of disputed compensation as to land, and in Scotland in manner provided by the Lands Clauses Consolidation (Scotland) Act, 1845, in like cases, or as near thereto as circumstances permit; and all provisions in the said Acts having reference to cases where any question of disputed compensation requires to be determined by the verdict of a jury shall, with the requisite alterations, be considered as incorporated with this Act, and to have reference to cases where the question of the liability of any owner in respect of any such accident as aforesaid requires to be determined by the verdict of a jury:

Assessors.

(6.) In England and Ireland the sheriff shall, if the Board of Trade so requires, or if the defendant so requires and the Board of Trade consents thereto, appoint as assessor a barrister-at-law of competent knowledge and standing:

Costs.

(7.) The costs incurred by all parties in and incidental to any such inquiry as aforesaid shall in England and Ireland be taxed by the master of one of Her Majesty's superior courts of common law as between attorney and client, and in Scotland by the auditor of the court of session as between agent and client; and shall, if the verdict in any inquiry is in favour of the plaintiff, be paid by the defendant, but if such verdict is in favour of the defendant, be paid by the Board of Trade out of the Mercantile Marine Fund:

Damages.

(8.) The payment of all damages and costs in any such inquiry as aforesaid shall, upon application made to such superior court as aforesaid by the party entitled thereto, be enforced by rule or order of such court or a judge thereof, or otherwise as such court or judge thinks fit:

Compromise if deemed proper.

(9.) The Board of Trade may make any compromise it thinks fit as to the damages payable in respect of personal injury, or of the death of any person; and any damages received in pursuance of such compromise shall, so far as the same extend, be applied in the same manner and be subject to the same rules as if the same were damages recovered on an inquiry instituted by the Board of Trade.

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Rules as to damages and application thereof.

510. The following rules shall be observed as to the damages recovered in any such inquiry, and the application thereof; (that is to say,)

(1.) The damages payable in each case of death or injury shall be assessed at 30*l.*:

This limit of 30*l.* damages, in respect of each case of death, applies only to damages assessed under inquiries instituted by the Board of Trade (*u*). The owner's whole liability is limited to 15*l.* on every registered ton of the vessel (see under sec. 505, p. 425).

Damages a first charge.

(2.) The damages found due on any such inquiry as aforesaid shall be the first charge on the aggregate amount for which the owner is liable, and shall be paid thereout in priority to all other claims:

Board of Trade to deal with the damages.

(3.) All such damages as aforesaid shall be paid to Her Majesty's Paymaster-General, and shall be distributed and dealt with by him in such manner as the Board of Trade directs; and in directing such distribution the Board of Trade shall have power in the first place to deduct and retain any costs incidental thereto; and in the next place, as regards the sums paid in respect of injuries, shall direct payment to each person injured of such compensation, not exceeding in any case the statutory amount, as the said Board thinks fit; and as regards the sums paid in respect of deaths shall direct payment thereof for the benefit of the husband, wife, parent, and child of the deceased, or any of them, in such shares, upon such evidence, and in such manner as the said Board thinks fit:

Surplus refunded.

(4.) The Board of Trade shall refund to the owner any surplus remaining under its control after making such distribution as aforesaid, and the sum so refunded shall form part of the residue hereinafter mentioned:

Board of Trade not liable.

(5.) The Board of Trade shall not, nor shall any person acting under it, be liable to any action, suit, account, claim, or demand whatsoever for or in respect of any act or matter done, or omitted to be done, in the distribution of such damages as aforesaid:

If amount is insufficient.

(6.) If the amount paid to Her Majesty's Paymaster-General in manner aforesaid is insufficient to meet the demands

(*u*) *Glaholm* v. *Barker*, L. R. 2 Eq. 602.

upon it, the several claims thereon shall abate pro portionally.

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511. After the completion of such inquiry as aforesaid, if any person injured estimates the damages payable in respect of such injury, or if the executor or administrator of any deceased person estimates the damages payable in respect of his death, at a greater sum than such statutory amount, or, in case of a compromise having been made by the Board of Trade, then the amount accepted by such Board by way of compensation for such injury or death as aforesaid, the person so estimating the same shall, upon repaying or obtaining the repayment by the Board of Trade to the owner of the amount paid by him to the Board of Trade in respect of such injury or death, be at liberty to bring an action for the recovery of damages in the same manner as if no power of instituting an inquiry had hereinbefore been given to the Board of Trade, subject to the following proviso; (that is to say,) that any damages recoverable by such person shall be payable only out of the residue, if any, of the aggregate amount for which the owner is liable, after deducting all sums paid to Her Majesty's Paymaster-General in manner aforesaid; and if the damages recovered in such action do not exceed double the statutory amount, such person shall pay to the defendant in such action all the costs thereof, such costs to be taxed in England and Ireland as between attorney and client, and in Scotland as between agent and client.

Any person who is dissatisfied with the amount of statutory damage may bring an action on his own account.

The meaning of this section is that if any person thinks 30*l.* (see sec. 510, subs. (1), p. 430), is not enough for the loss of his father, he is at liberty to bring an action just as if the Board of Trade had not awarded him that amount, subject to the proviso that the damages recoverable should only be paid out of the residue, if any, of the aggregate amount for which the owner is liable. This does not limit the owner's liability to 30*l.* in any case, because the end of the section says that if not more than double the statutory damages are recovered, the plaintiff must pay costs (*x*).

512. In cases where loss of life or personal injury has occurred by any accident in respect of which the owner of any such ship as aforesaid is or is alleged to be liable in damages, no person shall be entitled to bring any action, or institute any suit or other legal proceeding in the United Kingdom, until the completion of the inquiry (if any) instituted by the Board

If Board of Trade decline to institute proceedings, individuals may bring actions.

(*x*) *Glaholm* v. *Barker*, L. R. 2 Eq. 598.

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of Trade, or until the Board of Trade has refused to institute the same; and the Board of Trade shall, for the purpose of entitling any person to bring an action or institute a suit or other legal proceeding, be deemed to have refused to institute such inquiry whenever notice has been served on it by any person of his desire to bring such action or institute such suit or other legal proceeding, and no inquiry is instituted by the Board of Trade in respect of the subject matter of such intended action, suit, or proceeding for the space of one month after the service of such notice.

Proceedings by Board of Trade after refusal.

513. Whenever the Board of Trade, having refused in manner aforesaid to institute any inquiry, afterwards determines to institute the same, the damages and costs (if any) recovered on such inquiry shall be payable rateably with and not in priority to the costs and damages recovered in any other action, suit, or legal proceeding.

Proceedings in case of several claims being made on owner of ship.

514. In cases where any liability has been or is alleged to have been incurred by any owner in respect of loss of life, personal injury, or loss or damage to ships, boats, or goods, and several claims are made or apprehended in respect of such liability, then, subject to the right hereinbefore given to the Board of Trade of recovering damages in the United Kingdom in respect of loss of life or personal injury, it shall be lawful in England or Ireland for the High Court of Chancery, and in Scotland for the Court of Session, and in any British possession for any competent court, to entertain proceedings at the suit of any owner for the purpose of determining the amount of such liability subject as aforesaid, and for the distribution of such amount rateably amongst the several claimants, with power for any such court to stop all actions and suits pending in any other court in relation to the same subject matter; and any proceeding entertained by such court of chancery or court of session, or other competent court, may be conducted in such manner and subject to such regulations as to making any persons interested parties to the same, and as to the exclusion of any claimants who do not come in within a certain time, and as to requiring security from the owner, and as to payment of costs, as the court thinks just.

Extension of jurisdiction.

By the Common Law Procedure Act, 1860 (23 & 24 Vic. c. 126), s. 35, the Superior Courts or any judge thereof may upon summary application

by rule or order exercise the same jurisdiction as is hereby given to the Court of Chancery. And by the Admiralty Court Act, 1861 (24 Vic. c. 10), s. 13, the same powers are given to the Admiralty Court whenever any ship or the proceeds thereof are under its arrest. Thus, where the owner is exposed to conflicting claims arising out of damage occasioned by collision, he may file a petition in the Admiralty Court praying for a declaration of limited liability, and the Court is invested with full power to ascertain the amount of compensation due, and distribute it amongst the claimants (*y*).

Extension of jurisdiction to other courts.

The damages sufferers have sustained are to be ascertained in the same way as if the liability of the owners were unlimited, and then the sum for which the owner is liable (see under sec. 505, p. 424), is to be applied in payment of the damages when so ascertained; if they are less than the amount of his liability, then there is to be paid to each family the damages sustained; but if the damages so ascertained exceed the amount of liability, then the whole amount for which the owner is liable must be distributed among the families rateably, according to the amount of damages sustained; if it is less, they are paid in full, and the balance paid over to the owner (*z*).

Conflicting claims.

The power given to the Court of Chancery by this section is simply to determine the amount of a shipowner's liability, and to distribute that amount among the several claimants, and not to decide the question of liability or non-liability (*a*).

Money paid for damage how to be accounted for between part owners.

515. All sums of money paid for or on account of any loss or damage in respect whereof the liability of the owners of any ship is limited by the Ninth Part of this Act, and all costs incurred in relation thereto, may be brought into account among part owners of the same ship in the same manner as money disbursed for the use thereof.

Saving Clause.

Saving clause.

516. Nothing in the Ninth Part of this Act contained shall be construed—

To lessen or take away any liability to which any master or seaman, being owner or part owner of the ship to which he belongs, is subject in his capacity of master or seaman; or

To extend to any British ship not being a recognised British ship within the meaning of this Act.

As to the effect of a British ship not being recognised as a British ship see sec. 106, p. 96.

(*x*) *Glaholm* v. *Barker*, L. R. 2 Eq. 602.
(*y*) Williams and Bruce, Admiralty Practice (ed. 1868), 70.
(*z*) *Glaholm* v. *Barker*, L. R. 2 Eq. 604.
(*a*) *Hill* v. *Andus*, 1 Kay & J. 263.

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PART X.

LEGAL PROCEDURE.

Application.

Application of Part X. of the Act.

517. The Tenth Part of this Act shall in all cases, where no particular country is mentioned, apply to the whole of Her Majesty's dominions.

Legal Procedure (General).

Punishment of offences and recovery of penalties.

518. In all places within Her Majesty's dominions, except Scotland, the offences hereinafter mentioned shall be punished and penalties recovered in manner following; (that is to say,)

(1.) Every offence by this Act declared to be a misdemeanor shall be punishable by fine or imprisonment, with or without hard labour; and the court before which such offence is tried may in England make the same allowances and order payment of the same costs and expenses as if such misdemeanor had been enumerated in the Act passed in the seventh year of His late Majesty King George the Fourth, chapter sixty-four, or any other Act that may be passed for the like purpose; and may in any other part of Her Majesty's dominions make such allowances and order payment of such costs and expenses (if any) as are payable or allowable upon the trial of any misdemeanor under any existing Act or Ordinance, or as may be payable or allowable under any Act or law for the time being in force therein:

7 G. 4, c. 64.

Punishment for misdemeanors.

(2.) Every offence declared by this Act to be a misdemeanor shall also be deemed to be an offence hereby made punishable by imprisonment for any period not exceeding six months, with or without hard labour, or by a penalty not exceeding 100*l.*, and may be prosecuted accordingly in a summary manner instead of being prosecuted as a misdemeanor:

Summary prosecutions.

(3.) Every offence hereby made punishable by imprisonment for any period not exceeding six months, with or with-

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out hard labour, or by any penalty not exceeding 100*l.*, shall in England and Ireland be prosecuted summarily before any two or more justices, as to England in the manner directed by the Act of the eleventh and twelfth years of the reign of Her Majesty Queen Victoria, chapter forty-three, and as to Ireland in the manner directed by the Act of the fourteenth and fifteenth years of the reign of Her Majesty Queen Victoria, chapter ninety-three, or in such other manner as may be directed by any Act or Acts that may be passed for like purposes: And all provisions contained in the said Acts shall be applicable to such prosecutions in the same manner as if the offences in respect of which the same are instituted were hereby stated to be offences in respect of which two or more justices have power to convict summarily or to make a summary order:

Appeal on summary conviction.

(4.) In all cases of summary convictions in England, where the sum adjudged to be paid exceeds 5*l.*, or the period of imprisonment adjudged exceeds one month, any person who thinks himself aggrieved by such conviction may appeal to the next court of general or quarter sessions which is holden not less than twelve days after the day of such conviction for the county, city, borough, liberty, riding, division, or place wherein the case has been tried; provided that such person shall give to the complainant a notice in writing of such appeal, and of the cause and matter thereof, within three days after such conviction, and seven clear days at the least before such sessions, and shall also either remain in custody until the sessions, or enter into a recognizance, with two sufficient sureties, before a justice of the peace, conditioned personally to appear at the said sessions, and to try such appeal, and to abide the judgment of the court thereupon, and to pay such costs as shall be by the court awarded; and upon such notice being given, and such recognizance being entered into, the justice before whom the same shall be entered into shall liberate such person, if in custody; and the court at such sessions shall hear and determine the matter of the appeal, and shall make such order therein, with or without costs to

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either party, as to the court shall seem meet; and in case of the dismissal of the appeal, or the affirmance of the conviction, shall order and adjudge the offender to be punished according to the conviction, and to pay such costs as may be awarded, and shall, if necessary, issue process for enforcing such judgment:

Offences in British possessions.

(5.) All offences under this Act shall in any British possession be punishable in any court or by any justice of the peace or magistrate in which or by whom offences of a like character are ordinarily punishable, or in such other manner, or by such other courts, justices, or magistrates, as may from time to time be determined by any Act or Ordinance duly made in such possession in such manner as Acts and Ordinances in such possession are required to be made in order to have the force of law.

20 & 21 Vict. c. 43, s. 3, not to apply to proceedings under Board of Trade or this Act, &c.

25 & 26 Vict. c. 63, s. 65.—Nothing in the third section of the Act passed in the twentieth and twenty-first years of the reign of Her present Majesty, chapter forty-three, except so much thereof as provides for the payment of any fees that may be due to the clerk of the justices, shall be deemed to apply to extend to any proceeding under the direction of the Board of Trade, or under or by virtue of the provisions of the principal Act or this Act, or any Act amending the same.

Stipendiary magistrate to have same power as two justices.

519. Any stipendiary magistrate shall have full power to do alone whatever two justices of the peace are by this Act authorised to do.

Harbour master at Holyhead may be commissioned as justice.

30 & 31 Vict. c. 124, s. 12.—The harbour master for the time being of the harbour of Holyhead, in the event of it seeming meet to Her Majesty to assign to him Her Majesty's commission to act as a justice of the peace within the limits within which he is empowered to act in harbour matters, shall, during the continuance of such assignment and of his tenure of the office of harbour master, execute within such limits the duties of a justice of the peace, notwithstanding he may not be qualified by estate to be a justice of the peace for a county, and shall have within such limits the same power and jurisdiction as a stipendiary magistrate has by Act of Parliament when sitting at a police court or other place appointed in that behalf.

Jurisdiction.

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520. For the purpose of giving jurisdiction under this Act, every offence shall be deemed to have been committed, and every cause of complaint to have arisen, either in the place in which the same actually was committed or arose, or in any place in which the offender or person complained against may be.

Offence where deemed to have been committed.

39 & 40 Vict. c. 80, s. 40.—For the purpose of punishment, jurisdiction, and legal proceedings an offence under this Act (the Merchant Shipping Act, 1876) shall be deemed to be an offence under the Merchant Shipping Act, 1854.

Legal proceedings in case of offences.

521. In all cases where any district within which any court or justice of the peace or other magistrate has jurisdiction either under this Act or under any other Act or at common law for any purpose whatever is situate on the coast of any sea, or abutting on or projecting into any bay, channel, lake, river, or other navigable water, every such court, justice of the peace, or magistrate shall have jurisdiction over any ship or boat being on or lying or passing off such coast, or being in or near such bay, channel, lake, river, or navigable water as aforesaid, and over all persons on board such ship or boat or for the time being belonging thereto, in the same manner as if such ship, boat, or persons were within the limits of the original jurisdiction of such court, justice, or magistrate.

Jurisdiction over ships lying off the coasts.

18 & 19 Vict. c. 91, s. 21.—If any person, being a British subject, charged with having committed any crime or offence on board any British ship on the high seas or in any foreign port or harbour, or if any person, not being a British subject, charged with having committed any crime or offence on board any British ship on the high seas, is found within the jurisdiction of any court of justice in Her Majesty's dominions which would have had cognisance of such crime or offence if committed within the limits of its ordinary jurisdiction, such court shall have jurisdiction to hear and try the case as if such crime or offence had been committed within such limits: Provided, that nothing contained in this section shall be construed to alter or interfere with the Act of the thirteenth year of Her present Majesty, chapter ninety-six.

Jurisdiction in case of offences on board ship.

30 & 31 Vict. c. 124, s. 11.—If any British subject commits any crime or offence on board any British ship, or on board any foreign ship to which he does not belong, any court of jus-

Offences by British subjects on board ships.

§ 521. tice in Her Majesty's dominions, which would have had cognizance of such crime or offence if committed on board a British ship within the limits of the ordinary jurisdiction of such court, shall have jurisdiction to hear and determine the case as if the said crime or offence had been committed as last aforesaid.

As to offences committed by seamen and persons belonging to British ships, see s. 267, p. 229 *et seq.*

Crimes committed on the High Seas and Abroad.

Crimes are local by common law.

The common law of England considers crimes as altogether local, and cognizable, and punishable exclusively in the country where they are committed (*a*). It is eminently suitable that questions of this class should be examined at the seat of the *res gestae*, where witnesses can be readily reached, and where the scenes of crime can, if need be, be conveniently inspected (*b*). Crimes committed on the high seas form an exception to this rule, but are brought within it by the ships of every country being subject to the law and jurisdiction of the state whose flag they carry (*c*). This is beyond doubt the case when vessels are on the high seas, and our Courts have held that British ships remain subject to the jurisdiction of this country even when they are in the waters of a foreign state, and that offences committed on board, though by foreigners, can be tried here (*d*). But when ships are in the waters of a foreign state they are also subject to the jurisdiction of that state. "The jurisdiction of the nation," said Marshall, C. J. (*e*), "within its own territory is necessarily exclusive and absolute. It is susceptible of no limitation not imposed by itself."

Ships are subject to the courts of their own country.

R. v. *Anderson.* Facts of the case.

The following case, stated by Byles, J., and the judgment delivered, fully explain the law on this point (*f*), "James Anderson, an American citizen, was indicted at the Central Criminal Court for murder on board a vessel belonging to the port of Yarmouth in Nova Scotia; she was registered in London, and was sailing under the British flag. At the time of the offence committed, the vessel was in the River Garonne, within the boundaries of the French Empire, on her way to Bordeaux, which city is by the course of the river about ninety miles from the open sea. The vessel had proceeded about half way up the river, and was at the time of the offence about 300 yards from the nearest shore, the river at that place being about half a mile wide. The tide flows up to the place and beyond it. No evidence was given whether the place was or was not within the limits of the port of Bordeaux. It was objected for the prisoner that the offence having been committed within the Empire of France, the vessel being a colonial vessel, and the prisoner an

(*a*) Wharton's Conflict of Laws (ed. 1872), § 853.
(*b*) *Ib.*, § 854.
(*c*) Vattel, Droit des Gens (ed. 1820), liv. i. ch. xix. § 216. Wheaton's International Law by Dana (ed. 1866), § 106, p. 169.
(*d*) *R.* v. *Sattler*, D. & B. C. C. 525; *R.* v. *Anderson*, L. R. 1 C. C. R. 161; *R.* v. *Lesley*, 1 Bell, C. C. 220.
(*e*) *The Exchange*, 7 Cranch (Amer. Rep.), 136.
(*f*) *R.* v. *Anderson*, L. R. 1 C. C. R. 161.

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American citizen, the Court had no jurisdiction. I expressed an opinion unfavourable to the objection, but agreed to grant a case for the opinion of this Court." The prisoner was convicted of manslaughter.

Judgment of Bovill, C. J. The offence was within French territory.

Bovill, C. J. : "There is no doubt that the place where the offence was committed was within the territory of France, and the prisoner was therefore subject to the laws of France, which that nation might enforce if they thought fit; but at the same time he was also within a British merchant vessel, on board that vessel as a part of the crew, and, as such, he must be taken to have been under the protection of the British law, and also amenable to its provisions. It is said that the prisoner was an American citizen, but he had embarked by his own consent on board a British ship, and was at the time a portion of its crew. There are many observations to be found in various writers to show that in some instances, though subject to American law as a citizen of America, and to the law of France as being found within French territory, yet that he must also be considered as being within British jurisdiction, as forming a part of the crew of a British vessel upon the principle that the jurisdiction of a country is preserved over its vessels, though they may be in ports or rivers belonging to another nation. With respect to France, M. Ortolan (*g*) in his work says, that it is clear that with regard to merchant vessels of foreign countries, the French nation do not assert their police law against the crews of those vessels, unless the aid of the French authority be invoked by those on board, or unless the offence committed leads to some disturbance in their ports (*h*). The law of France is very clear on this point. As far as America is concerned, she has by statute made regulations for those on board her vessels in foreign ports, and we have adopted the same course in this country. When vessels go into a foreign port, they must respect the laws of that nation to which the port belongs; but they must also respect the laws of the nation to which the vessel belongs. When our vessels go into foreign countries we have the right, even if we are not bound to make such laws as to prevent disturbance in foreign ports, and it is the right of every nation which sends ships to foreign countries, to make such laws and regulations."

French law.

American law.

The case was decided independently of s. 267 of the Merchant Shipping Act, 1854, "for," said Bovill, C. J., "the common law of England is, in my judgment, sufficient to decide it. If this offence had been committed upon the high seas, there could have been no doubt upon the question, either on principle or authority, and the offence then would have been committed clearly within the jurisdiction of the Admiralty, and therefore the Central Criminal Court would have stood in the same position as if the offence had been committed within its jurisdiction on land (*i*). Then is the case different because the offence was committed when the vessel was lying in the Bordeaux river, some miles from its mouth, and not in the open sea? The place where the vessel was lying was in a navigable river, in a broad part of it, below all bridges, and at

(*g*) Diplomatie de la Mer (4th ed.), bk. ii. ch. 13, pp. 269—274.

(*h*) Avis du Conseil d'État, 20 Novembre, 1806, given in Ortolan, vol. i. Annexe J.

(*i*) 4 & 5 Wm. IV. c. 36, s. 22. With respect to America, see the celebrated judgment of Story, J., in *De Lovio* v. *Boit*, 2 Gallison (Amer. Rep.), 398.

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a point where the tide ebbs and flows, and where great ships lie and hover. The cases that have been cited (*k*) clearly show that the Admiralty has jurisdiction in such a case; and if so, the case stands precisely the same as if the offence had been committed upon the high seas. On the whole, I have come clearly to the conclusion that the prisoner is amenable to British law, and that the conviction was right."

Vessels of war and private ships.

A distinction, as regards the jurisdiction of the country where the vessel is, has been made by many writers on international law, between ships of war and private merchant vessels, and it has been asserted that a public ship, when lying in the territorial waters of a foreign state, and all persons and things on board of it, enjoy an absolute immunity from local jurisdiction and the operation of local law, on the ground that a public ship is part of the territory of the nation it belongs to (*l*). This subject has recently undergone an exhaustive discussion by the Royal Commission on Fugitive Slaves (*m*), and according to the opinions then expressed, it would seem that vessels of war do not enjoy this privilege absolutely (*n*), but that the local authorities have jurisdiction over crimes committed on board by persons not connected with the ship, and over criminals taking refuge there.

Absolute exterritoriality of public ships denied.

Case of John Brown.

In a case that occurred in 1819, John Brown, an English subject, took part in a Peruvian revolt, and was imprisoned for this at Lima. He escaped, and took refuge on board H.M.S. "Tyne," then lying in the harbour. The captain refused to give him up to the Peruvians. On application being made to Lord Stowell (then Sir William Scott), for his opinion, he replied in a letter dated 18th November, 1820: "Upon this question, proposed *generally*, I feel no hesitation in declaring that I know of no such right of protection belonging to the British flag, and that I think such a pretension is unfounded in point of principle, is injurious to the rights of other countries, and is inconsistent with those of our own . . . . . The common convenience of nations has for certain reasons and to a certain extent established in favour of ships of war, that they themselves shall not be liable to the civil process of the country in whose ports they are lying; though even this immunity has been occasionally questioned. But that individuals merely belonging to the same country with the ship of war are exempted from the civil and criminal process of the country, in its ordinary jurisdiction of justice by getting on board such ship, and claiming what is called the protection of its flag, is a pretension which, however heard of in practice occasionally, has no existence whatever in principle" (*o*).

Opinion of Lord Stowell.

Ships of war themselves not liable to civil process.

Individuals on board not exempt.

Opinion of Cockburn, C. J.

Lord Chief Justice Cockburn in speaking of this letter (*p*), says that in the case of a criminal escaping from justice, or of one of our own

(*k*) *R.* v. *Jemot*, Old Bailey, 28th Feb. 1812; *R.* v. *Allen*, 1 Moo. C. C. 494; *U. S.* v. *Holmes*, 5 Wheat. (Amer. Rep.), 412; *Thomas* v. *Lane*, 2 Sumner (Amer. Rep.), 1.

(*l*) Ortolan, Diplomatie de la Mer, liv. ii. c. x. p. 212. Hautefeuille, Des Droits et des Devoirs des Nations neutres. Historicus, Letter to the *Times*, 4th Nov. 1875. And see Lampredi, Trattato del Commercio del Popoli Neutrali in Tempo di Guerra (French translation by Peuchet), p. 140.

(*m*) See Report of the Commission. Parliamentary Papers, 1876 (C—1516).

(*n*) See Memoranda by Lord Chief Justice Cockburn, p. xxviii. of the Report, by Mr. Fitzjames Stephen, p. lvi. by Mr. Rothery, p. lxii.

(*o*) See p. lxxvi. of the Report.

(*p*) See p. xlii. of the Report.

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subjects being confined in a foreign ship, our Courts of Justice would probably take their stand on the law as laid down by so great an authority as Lord Stowell. He also suggests that "The rule which reason and good sense would, as it strikes me, prescribe, would be that as regards the discipline of a foreign ship, and offences committed on board as between members of her crew towards one another, matters should be left entirely to the law of the ship, and that, should the offender escape to the shore, he should, if taken, be given up to the commander of the ship on demand, and should be tried on shore only if no such demand be made. But if a crime be committed on board the ship, upon a local subject, or if, a crime having been committed on shore, the criminal gets on board a foreign ship, he should be given up to the local authorities. In which way the rule should be settled, so important a principle of international law ought not to be permitted to remain in its present unsettled state." "No state," says Mr. Fitzjames Stephen, "can be supposed, by permitting a foreign ship of war to enter its harbour, to have consented that its own subjects should be able to free themselves from its own laws by getting on board that ship" (*q*). These opinions are supported by modern writers on international law of great authority (*r*).

Discipline on board.

Refugees should be given up.

Opinion of Mr. Fitzjames Stephen.

How far the criminal jurisdiction of this country over foreigners not in British ships extends beyond the limit of the sea shore, is at present undecided. The subject has quite recently been exhaustively argued in the case of the *Franconia*, but judgment was not delivered until this work had gone through the press.

Extent of jurisdiction.

Piracy.

Piracy is robbery or a forcible depredation on the high seas, without lawful authority, and done *animo furandi*, and in the spirit and intention of universal hostility (*s*). Pirates are considered the enemies of the human race, and may be tried and punished in any country where they may be found, as they are reputed to be out of the protection of all laws and privileges (*t*).

Can be tried anywhere.

Accessories.

24 & 25 Vict. c. 94, s. 9.—Where any person shall, within the jurisdiction of the Admiralty of England or Ireland, become an accessory to any felony, whether the same be a felony at common law or by virtue of any Act passed or to be passed, and whether such felony shall be committed within that jurisdiction or elsewhere, or shall be begun within that jurisdiction and completed elsewhere, or shall be begun elsewhere and completed within that jurisdiction, the offence of such person shall be felony; and in any indictment for any such offence the venue in the

As to offences committed within the jurisdiction of the Admiralty.

(*q*) See p. lvii. of the Report.

(*r*) Baron de Cussy, Phases et Causes Célèbres du Droit maritime des Nations, liv. i. tit. ii. s. 60, p. 147; Bluntschli, Droit international (French ed. 1870), s. 321, p. 184, note. Phillimore on International Law, vol. i. p. 372.

(*s*) Kent's International Law (Abdy's ed. 1866), 427; *U. S.* v. *Smith*, 5 Wheaton (Amer. Rep.), 153.

(*t*) Bynkershoek, Quaest. Jur. Pub. ch. xvii. As to the statutes relating to piracy and its punishments in this country, see Archbold's Criminal Pleading (ed. 1871), p. 430; *In re Tirnan*, 5 B. & S. 645.

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margin shall be the same as if the offence had been committed in the county or place in which such person shall be indicted, and his offence shall be averred to have been committed "on the high seas;" provided that nothing herein contained shall alter or affect any of the laws relating to the government of Her Majesty's land or naval forces.

Larceny.

Offences committed within the jurisdiction of the Admiralty.

24 & 25 Vict. c. 96 (*The Larceny Act*, 1861), s. 115.—All indictable offences mentioned in this Act which shall be committed within the jurisdiction of the Admiralty of England or Ireland shall be deemed to be offences of the same nature, and liable to the same punishments, as if they had been committed upon the land in England or Ireland, and may be dealt with, inquired of, tried and determined in any county or place in which the offender shall be apprehended or be in custody; and in any indictment for any such offence, or for being an accessory to any such offence, the venue in the margin shall be the same as if the offence had been committed in such county or place, and the offence itself shall be averred to have been committed "on the high seas;" provided, that nothing herein contained shall alter or affect any of the laws relating to the government of Her Majesty's land or naval forces.

Service to be good if made personally, or on board ship.

522. Service of any summons or other matter in any legal proceeding under this Act shall be good service, if made personally on the person to be served, or at his last place of abode, or if made by leaving such summons for him on board any ship to which he may belong with the person being or appearing to be in command or charge of such ship.

Service of order on master, &c.

39 & 40 Vict. c. 80, s. 35.—Where any order, notice, statement, or document requires, for the purpose of any provision of this Act (the Merchant Shipping Act, 1876), to be served on the master of a ship, the same shall be served, where there is no master, and the ship is in the United Kingdom, on the managing owner of the ship, or if there is no managing owner, on some agent of the owner residing in the United Kingdom, or where no such agent is known or can be found, by affixing a copy thereof to the mast of the ship.

Any such order, notice, statement or document, may be served by delivering a copy thereof personally to the person to be served, or by leaving the same at his last place of abode, or in the case of a master by leaving it for him on board the ship with the person being or appearing to be in command or charge of such ship.

Any person who obstructs the service of any order, notice, statement, or document on the master of a ship shall incur a penalty not exceeding twenty pounds, and if the owner or master of the ship is party or privy to such obstruction he shall be guilty of a misdemeanor.

523. In all cases where any court, justice or justices of the peace, or other magistrate, has or have power to make an order directing payment to be made of any seaman's wages, penalties, or other sums of money, then, if the party so directed to pay the same is the master or owner of a ship, and the same is not paid at the time and in manner prescribed in the order, the court, justice or justices, or other magistrate who made the order, may, in addition to any other powers they or he may have for the purpose of compelling payment, direct the amount remaining unpaid to be levied by distress or poinding and sale of the said ship, her tackle, furniture, and apparel.

Sums ordered to be paid leviable by distress on ship.

524. Any court, justice, or magistrate imposing any penalty under this Act, for which no specific application is herein provided, may, if it or he thinks fit, direct the whole or any part thereof to be applied in compensating any person for any wrong or damage which he may have sustained by the act or default in respect of which such penalty is imposed, or to be applied in or towards payment of the expenses of the proceedings; and, subject to such directions or specific application as aforesaid, all penalties recovered in the United Kingdom shall be paid into the receipt of Her Majesty's exchequer in such manner as the Treasury may direct, and shall be carried to and form part of the consolidated fund of the United Kingdom; and all penalties recovered in any British possession shall be paid over into the public treasury of such possession, and form part of the public revenue thereof.

Application of penalties.

525. The time for instituting summary proceedings under this Act shall be limited as follows; (that is to say,)

Limitation of time in summary proceedings.

(1.) No conviction for any offence shall be made under this Act in any summary proceeding instituted in the United Kingdom, unless such proceeding is commenced within six months after the commission of the offence; or if both or either of the parties to such proceeding happen during such time to be out of the United Kingdom, unless the same is commenced within two months after they both first happen to arrive or to be at one time within the same:

In United Kingdom.

(2.) No conviction for any offence shall be made under this Act in any proceeding instituted in any British possession, unless such proceeding is commenced within six

In British possessions.

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months after the commission of the offence; or if both or either of the parties to the proceeding happen during such time not to be within the jurisdiction of any court capable of dealing with the case, unless the same is commenced within two months after they both first happen to arrive or to be at one time within such jurisdiction:

Orders for payment of money in United Kingdom.

(3.) No order for the payment of money shall be made under this Act in any summary proceeding instituted in the United Kingdom unless such proceeding is commenced within six months after the cause of complaint arises; or, if both or either of the parties happen during such time to be out of the United Kingdom, unless the same is commenced within six months after they both first happen to arrive or to be at one time within the same:

In British possessions.

(4.) No order for the payment of money shall be made under this Act in any summary proceeding instituted in any British possession, unless such proceeding is commenced within six months after the cause of complaint arises; or, if both or either of the parties to the proceeding happen during such time not to be within the jurisdiction of any court capable of dealing with the case, unless the same is commenced within six months after they both first happen to arrive or be at one time within such jurisdiction:

And no provision contained in any other Act or Acts, Ordinance or Ordinances, for limiting the time within which summary proceedings may be instituted shall affect any summary proceeding under this Act.

Document proved without calling attesting witness.

526. Any document required by this Act to be executed in the presence of or to be attested by any witness or witnesses, may be proved by the evidence of any person who is able to bear witness to the requisite facts, without calling the attesting witness or witnesses or any of them.

Power of judge of Court of Record or Admiralty to arrest foreign ship that has occasioned damage.

527. Whenever any injury has, in any part of the world, been caused to any property belonging to Her Majesty or to any of Her Majesty's subjects by any foreign ship, if at any time thereafter such ship is found in any port or river of the United Kingdom or within three miles of the coast thereof, it shall be

lawful for the judge of any court of record in the United Kingdom, or for the judge of the High Court of Admiralty, or in Scotland the Court of Session, or the sheriff of the county within whose jurisdiction such ship may be, upon its being shown to him by any person applying summarily that such injury was probably caused by the misconduct or want of skill of the master or mariners of such ship, to issue an order directed to any officer of customs or other officer named by such judge, requiring him to detain such ship until such time as the owner, master, or consignee thereof has made satisfaction in respect of such injury, or has given security, to be approved by the judge, to abide the event of any action, suit, or other legal proceeding that may be instituted in respect of such injury, and to pay all costs and damages that may be awarded thereon; and any officer of customs or other officer to whom such order is directed shall detain such ship accordingly.

Power in certain cases to detain ship before application made to judge.

528. In any case where it appears that before any application can be made under the foregoing section such foreign ship will have departed beyond the limits therein mentioned, it shall be lawful for any commissioned officer on full pay in the military or naval service of Her Majesty, or any British officer of customs, or any British consular officer, to detain such ship until such time as will allow such application to be made and the result thereof to be communicated to him; and no such officer shall be liable for any costs or damages in respect of such detention unless the same is proved to have been made without reasonable grounds.

Who to be defendant to suit in such cases.

529. In any action, suit, or other proceeding in relation to such injury, the person so giving security as aforesaid shall be made defendant or defender, and shall be stated to be the owner of the ship that has occasioned such damage; and the production of the order of the judge made in relation to such security shall be conclusive evidence of the liability of such defendant or defender to such action, suit, or other proceeding.

As a County Court is a Court of record, these sections conferred jurisdiction on County Courts in such cases.

Admiralty Jurisdiction in the Colonies.

By 12 & 13 Vict. c. 96, s. 1, all persons charged in any colony with offences committed on the sea, may be dealt with in the same manner as if the offences had been committed on waters within the local juris-

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diction of the Courts of the colony. By section 2 of the same Act, persons convicted of such offences shall suffer the like punishments as would be given them if convicted of similar offences in England.

At trials in any colonial Courts by virtue of Imperial Acts, Courts empowered to pass sentences as if crimes had been committed in the colony.

By the Courts (Colonial) Jurisdiction Act, 1874 (37 & 38 Vict. c. 27) s. 3, when, by virtue of any Act of Parliament now or hereafter to be passed, a person is tried in a Court of any colony for any crime or offence committed upon the high seas or elsewhere out of the territorial limits of such colony and of the local jurisdiction of such Court, or if committed within such local jurisdiction made punishable by that Act, such person shall, upon conviction, be liable to such punishment as might have been inflicted upon him if the crime or offence had been committed within the limits of such colony and of the local jurisdiction of the Court, and to no other, anything in any Act to the contrary notwithstanding: Provided always, that if the crime or offence is a crime or offence not punishable by the law of the colony in which the trial takes place, the person shall, on conviction, be liable to such punishment (other than capital punishment) as shall seem to the Court most nearly to correspond to the punishment to which such person would have been liable in case such crime or offence had been tried in England. (See s. 2, p. 2, as to the definition of a colony in this Act.)

Mode of procedure in criminal cases.

17 & 18 Vict. c. 120, s. 15.—All criminal proceedings under "The Seamen's Fund Winding-up Act, 1851," "The Pilotage Law Amendment Act, 1853," "The Merchant Shipping Law Amendment Act, 1853," or this Act, shall be carried on in the same manner as similar proceedings under "The Merchant Shipping Act, 1854;" and all rules of law, practice, and evidence which are applicable to such last-mentioned proceedings shall be applicable to criminal proceedings under this Act.

Legal Procedure (Scotland).

Offences punishable as misdemeanors.

530. In Scotland every offence which by this Act is described as a felony or misdemeanor may be prosecuted by indictment or criminal letters at the instance of Her Majesty's Advocate before the High Court of Justiciary, or by criminal libel at the instance of the Procurator Fiscal of the county before the Sheriff, and shall be punishable with fine and with imprisonment, with or without hard labour in default of payment, or with imprisonment, with or without hard labour, or with both, as the court may think fit, or in the case of felony with penal servitude, where the court is competent thereto; and such court may also, if it think fit, order payment by the offender of the costs and expenses of the prosecution.

Summary proceedings.

531. In Scotland, all prosecutions, complaints, actions, or proceedings under this Act, other than prosecutions for felonies or misdemeanors, may be brought in a summary form before

the sheriff of the county, or before any two justices of the peace of the county or burgh where the cause of such prosecution or action arises, or where the offender or defender may be for the time, and when of a criminal nature, or for penalties, at the instance of the procurator fiscal of court, or at the instance of any party aggrieved, with concurrence of the procurator fiscal of court; and the court may, if it think fit, order payment by the offender or defender of the costs of the prosecution or action.

Form of complaint.

532. In Scotland, all prosecutions, complaints, actions, or other proceedings under this Act may be brought either in a written or printed form, or partly written and partly printed, and where such proceedings are brought in a summary form it shall not be necessary in the complaint to recite or set forth the clause or clauses of the Act on which such proceeding is founded, but it shall be sufficient to specify or refer to such clause or clauses, and to set forth shortly the cause of complaint or action, and the remedy sought; and when such complaint or action is brought in whole or in part for the enforcement of a pecuniary debt or demand, the complaint may contain a prayer for warrant to arrest upon the dependence.

Mode of requiring appearance of defender and witnesses.

533. In Scotland, on any complaint or other proceeding brought in a summary form under this Act being presented to the sheriff-clerk or clerk of the peace, he shall grant warrant to cite the defender to appear personally before the said sheriff or justices of the peace on a day fixed, and at the same time shall appoint a copy of the same to be delivered to him by a sheriff-officer or constable, as the case may be, along with the citation; and such deliverance shall also contain a warrant for citing witnesses and havers to compear at the same time and place to give evidence and produce such writs as may be specified in their citation; and where such warrant has been prayed for in the complaint or other proceeding, the deliverance of the sheriff-clerk or clerk of the peace shall also contain warrant to arrest upon the dependence in common form: Provided always, that where the apprehension of any party, with or without a warrant, is authorised by this Act, such party may be detained in custody until he can be brought at the earliest opportunity before any two justices, or the sheriff who may have jurisdiction in the place, to be dealt with as this Act directs, and no citation or inducise shall in such case be necessary.

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Backing arrestments.

534. When it becomes necessary to execute such arrestment on the dependence against goods or effects of the defender within Scotland, but not locally situated within the jurisdiction of the sheriff or justices of the peace by whom the warrant to arrest has been granted, it shall be competent to carry the warrant into execution on its being endorsed by the sheriff-clerk or clerk of the peace of the county or burgh respectively within which such warrant comes to be executed.

Compelling attendance of witnesses.

535. In all proceedings under this Act in Scotland the sheriff or justices of the peace shall have the same power of compelling attendance of witnesses and havers as in cases falling under their ordinary jurisdiction.

Proceedings to be *vivâ voce*.

536. The whole procedure in cases brought in a summary form before the sheriff or justices of the peace in Scotland shall be conducted *vivâ voce*, without written pleadings, and without taking down the evidence in writing, and no record shall be kept of the proceedings, other than the complaint, and the sentence or decree pronounced thereon.

Power to adjourn.

537. It shall be in the power of the sheriff or justices of the peace in Scotland to adjourn the proceedings from time to time to any day or days to be fixed by them, in the event of absence of witnesses or of any other cause which shall appear to them to render such adjournment necessary.

Sentence to be in writing.

538. In Scotland all sentences and decrees to be pronounced by the sheriff or justices of the peace upon such summary complaints shall be in writing; and where there is a decree for payment of any sum or sums of money against a defender, such decree shall contain warrant for arrestment, poinding, and imprisonment in default of payment, such arrestment, poinding, or imprisonment to be carried into effect by sheriffs-officers or constables, as the case may be, in the same manner as in cases arising under the ordinary jurisdiction in the sheriff or justices: Provided always, that nothing herein contained shall be taken or construed to repeal or affect an Act of the fifth and sixth years of William the Fourth, intituled An Act for abolishing, in Scotland, Imprisonment for Civil Debts of small Amount.

Imprisonment to be inflicted in default of payment.
5 & 6 W. 4, c. 70.

Sentence and penalties in default of defender's appearance.

539. In all summary complaints and proceedings for recovery of any penalty or sum of money in Scotland, if a defender who has been duly cited shall not appear at the time and place required by the citation, he shall be held as confessed, and sentence or decree shall be pronounced against him in terms of the

complaint, with such costs and expenses as to the court shall seem fit: Provided always that he shall be entitled to obtain himself reponed against any such decree at any time before the same be fully implemented, by lodging with the clerk of court a reponing note, and consigning in his hands the sum decerned for, and the costs which had been awarded by the court, and on the same day delivering or transmitting through the post to the pursuer or his agent a copy of such reponing note; and a certificate by the clerk of court of such note having been lodged shall operate as a sist of diligence till the cause shall have been reheard and finally disposed of, which shall be on the next sitting of the court, or on any day to which the court shall then adjourn it.

Warrants to apprehend in default of appearance.

540. In all summary complaints or other proceedings not brought for the recovery of any penalty or sum of money in Scotland, if a defender being duly cited, shall fail to appear, the sheriff or justices may grant warrant to apprehend and bring him before the court.

Backing sentences or decrees.

541. In all cases where sentences or decrees of the sheriff or justices require to be enforced within Scotland, but beyond the jurisdiction of the sheriff or justices by whom such sentences or decrees have been pronounced, it shall be competent to carry the same into execution upon the same being indorsed by the sheriff-clerk or clerk of the peace of the county or burgh within which such execution is to take place.

Orders not to be quashed for want of form; and to be final.

542. No order, decree, or sentence, pronounced by any sheriff or justice of the peace in Scotland under the authority of this Act shall be quashed or vacated for any misnomer, informality, or defect of form; and all orders, decrees, and sentences so pronounced shall be final and conclusive, and not subject to suspension, advocation, reduction, or to any form of review or stay of execution, except on the ground of corruption or malice on the part of the sheriff or justices, in which case the suspension, advocation, or reduction must be brought within fourteen days of the date of the order, decree, or sentence complained of: Provided always, that no stay of execution shall be competent to the effect of preventing immediate execution of such order, decree, or sentence.

543. Such of the general provisions with respect to jurisdiction, procedure, and penalties contained in this Act as are

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General rules, so far as applicable, to extend to penalties, and proceedings in Scotland.

ADMIRALTY COURTS.

Probate, Divorce, and Admiralty Division of the High Court of Justice.

Admiralty Court merged in the High Court.

The High Court of Admiralty, which formerly existed as an independent Court, is now merged in the High Court of Justice, and its jurisdiction is transferred to the High Court by the "Judicature Act, 1873" (*x*). Causes and matters which would have been within the exclusive cognisance of the High Court of Admiralty if the Judicature Acts had not passed, are to be assigned to the Probate, Divorce, and Admiralty Division of the High Court (*y*), and such causes and matters are to be assigned to the then Judge of the Admiralty Court (*z*). Any cause or matter assigned to the Probate Division, may be heard at the request of the President of the Division, and with the concurrence of the President of the High Court (the Lord Chancellor), by any other Judge of the High Court (*a*). Appeals from the Admiralty Court used formerly to go direct to the Privy Council. They are now taken first to the Court of Appeal (*b*). All rules and orders of Court in force at the time of commencement of the "Judicature Act, 1875" (*c*), unless they are expressly varied by the rules in the first schedule to that Act, or by Order in Council made before the commencement of that Act, remain in force in the High Court of Justice (*d*). What used formerly to be called a cause *in rem*, or *in personam*, in the Admiralty Court, is now to be called an action (*e*).

Appeals.

Antiquity of Admiralty Court.

Its ancient jurisdiction.

The Admiralty Court was of very high antiquity. It has been distinctly traced as early as the reign of Edward I., and it is almost certain that its origin may be safely assigned in some anterior age. In the time of Edward III. the authorities show that it exercised jurisdiction,—1st, over matters of prize and its incidents; 2nd, over torts, injuries, and offences in parts within the ebb and flow of the tide, on the British seas, and on the high seas; 3rd, over contracts and other matters regulated

(*x*) 36 & 37 Vict. c. 66, ss. 3, 16.
(*y*) *Ib.* s. 34.
(*z*) Sir Robert Phillimore; *Ib.* s. 42.
(*a*) *Ib.* s. 44.
(*b*) *Ib.* s. 18, subs. (5).
(*c*) 1st November, 1875.
(*d*) 38 & 39 Vict. c. 77, s. 18.
(*e*) *Ib.* Sch. I. Order I. r. 1.

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and provided for by the laws of Oleron and other special ordinances; and 4th, over maritime causes in general (*f*). The slight acquaintance with maritime commerce possessed by the English in those remote times obliged them to have recourse to foreign systems of jurisprudence. Richard I. is said to have introduced the laws of Oleron into this country on his return from the Crusades, and they form the ancient basis of our maritime law (*g*).

High seas.

The jurisdiction on the high seas extends from low water mark out to sea. As soon as a vessel has passed low water mark she is on the high seas (*h*). But the limit varies with the tide. When the tide is in and covers the land, it is sea, and within the Admiralty jurisdiction, but when the tide is out it is land (*i*). Water running between two lands belonging to the same county, as in the case of the Solent, may be considered as the high seas (*k*); and so may tidal rivers (*l*). In America the jurisdiction of the Admiralty extends over all navigable rivers (*m*).

In America.

Since the merger of the Admiralty Court in the High Court of Justice, questions as to its special and exclusive jurisdiction have ceased to be as important as they were before (*n*). But the extent of the jurisdiction of this country over foreigners beyond its own shores, is one of immense importance. This question has recently been exhaustively argued before fourteen judges, in the case of the *Franconia*, but the judgment was not delivered in time for its publication in this work.

Evidence in the Admiralty Court.

The Court of Admiralty observes all the great principles of the law of evidence, but in matters of merely technical proof, and where not bound by statute or authority, will exercise a discretion according to the circumstances of the case. It adopts this course owing to the nature of the causes tried all over the world, and the immense expense that would be incurred from a rigid adherence to rules proper elsewhere (*o*).

Admiralty Jurisdiction of County Courts.

By the "County Courts Admiralty Jurisdiction Act, 1868" (31 & 32 Vict. c. 71), s. 2, power was given to Her Majesty, to appoint any County Court to have Admiralty jurisdiction, by Order in Council; and to assign a district within which it should exercise such jurisdiction. No County Courts but such as are so appointed are to have Admiralty jurisdiction.

No County Court judge, except the judges of the London Court, shall have jurisdiction in the city of London.

Extent of Admiralty

31 & 32 Vict. c. 71, s. 3.—Any County Court having Admiralty jurisdiction shall have jurisdiction, and all powers and authorities relating

(*f*) See the judgment of Story, J., in *De Lovio* v. *Boit*, 2 Gallison (Amer. Rep.), 398; Colquhoun's Judicature Acts, Introduction, xvi.

(*g*) See Lindsay's History of Merchant Shipping, vol. i. 379 n. For a concise view of these ancient laws, see Colquhoun's Summary of the Roman Civil Law, vol. ii. § 977, vol. iii. §§ 1801, 1802, 1821, 2193.

(*h*) *General Iron Screw Co.* v. *Schurmanns*, 1 Johns. & H. 180.

(*i*) *R.* v. *Forty-nine Casks of Brandy*, 3 Hagg. Ad. 283; *The Pauline*, 2 W. Rob. 363.

(*k*) *The Saxonia*, 31 L. J. (Ad.) 201.

(*l*) *The Peerless*, Lush. 30.

(*m*) Parsons on Shipping (ed. 1869), II. 165.

(*n*) For a general view of the Courts of this country, and the effect of their consolidation, see Colquhoun's Judicature Acts (ed. 1875), Introduction.

(*o*) *The Peerless*, Lush. 30; 2 L. T. N. S. 25.

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thereto, to try and determine, subject and according to the provisions of this Act, the following causes (in this Act referred to as Admiralty causes) :

jurisdiction of County Courts.

Salvage.

(1.) As to any claim for salvage—Any cause in which the value of the property saved does not exceed one thousand pounds, or in which the amount claimed does not exceed three hundred pounds :

Towage, necessaries, wages.

(2.) As to any claim for towage, necessaries, or wages—Any cause in which the amount claimed does not exceed one hundred and fifty pounds :

Damage.

(3.) As to any claim for damage to cargo, or damage by collision—Any cause in which the amount claimed does not exceed three hundred pounds :

When parties agree.

(4.) Any cause in respect of any such claim or claims as aforesaid, but in which the value of the property saved or the amount claimed is beyond the amount limited as above mentioned, when the parties agree by a memorandum signed by them or by their attorneys or agents that any County Court having Admiralty jurisdiction, and specified in the memorandum, shall have jurisdiction.

This jurisdiction is extended by 32 & 33 Vict. c. 51, s. 2, to—

Carriage of goods, &c.

(1.) Any claim arising out of any agreement made in relation to the use or hire of any ship, or in relation to the carriage of goods in any ship, and also as to any claim in tort in respect of goods carried in any ship, provided the amount claimed does not exceed three hundred pounds :

When parties agree.

(2.) Any cause in respect of any such claim or claims as aforesaid, but in which the amount claimed is beyond the amount limited as above-mentioned, when the parties agree, by a memorandum signed by them or by their attorneys or agents, that any County Court having Admiralty jurisdiction, and specified in the memorandum, shall have jurisdiction :

And by 32 & 33 Vict. c. 51, s. 4, to—

Damage to ships.

All claims for damage to ships, whether by collision or otherwise, when the amount claimed does not exceed three hundred pounds.

Proceedings *in rem* or *in personam*.

The jurisdiction conferred by these Acts may be exercised either by proceedings *in rem* or *in personam* (*p*).

These Acts do not confer upon County Courts a more extensive jurisdiction in cases of collision or of claims for necessaries, than that which formerly belonged to the Admiralty Court (*q*).

Bottomry.

A County Court cannot entertain a suit arising from a bottomry bond (*r*).

The above section extending their jurisdiction gives the County Courts jurisdiction in cases of claims arising out of charter-parties or other agreements for the use or hire of ships, although the Court of

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(*p*) 32 & 33 Vict. c. 51, s. 3.

(*q*) *Everard* v. *Kendall*, L. R. 5 C. P. 428 ; *The Dowse*, L. R. 3 A. & E. 135.

(*r*) *The Elpis*, L. R. 4 A. & E. 1.

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Admiralty had no original jurisdiction in such cases (*s*). A suit by a broker to recover commission due to him on the execution of a charter-party is not an agreement "in relation to the carriage of goods" within the Admiralty jurisdiction of the County Court (*t*).

Commission on charter-party.

No County Court has any jurisdiction in any prize cause, or in any other matter within the Naval Prize Act, 1864, or in any matter arising under any of the Acts for the suppression of the slave trade, or any Admiralty jurisdiction by way of appeal (*u*).

Prize and slave trade causes.

Transfer of Causes.

31 & 32 Vict. c. 71, s. 6.—The High Court of Admiralty of England, on motion by any party to an Admiralty cause pending in a County Court, may, if it shall think fit, with previous notice to the other party, transfer the cause to the High Court of Admiralty, and may order security for costs, or impose such other terms as to the Court may seem fit.

As to transfer from County Court by order of High Court of Admiralty.

31 & 32 Vict. c. 71, s. 7.—If during the progress of an Admiralty cause in a County Court it appears to the Court that the subject matter exceeds the limit in respect of amount of the Admiralty jurisdiction of the Court, the validity of any order or decree theretofore made by the Court shall not be thereby affected, but (unless the parties agree, by a memorandum signed by them or by their attorneys or agents, that the Court shall retain jurisdiction,) the Court shall by order transfer the cause to the High Court of Admiralty; but that Court may, nevertheless, if the judge of that Court in any case thinks fit, order that the cause shall be prosecuted in the County Court in which it was commenced, and it shall be prosecuted accordingly.

As to transfer of causes by order of County Court to High Court of Admiralty.

31 & 32 Vict. c. 71, s. 8.—If during the progress of an Admiralty cause in a County Court it shall appear to the Court that the cause could be more conveniently prosecuted in some other County Court, or in the High Court of Admiralty of England, the Court may by order transfer it to such other County Court, or to the High Court of Admiralty of England, as the case may be, and the cause shall thenceforward be so prosecuted accordingly.

As to transfer of causes to other County Courts or Court of Admiralty.

Restriction on Proceedings in Superior Courts.

31 & 32 Vict. c. 71, s. 9.—If any person shall take in the High Court of Admiralty of England or in any Superior Court proceedings which he might, without agreement, have taken in a County Court, except by order of the judge of the High Court of Admiralty, or of such Superior Court, or of a County Court having Admiralty jurisdiction, and shall not recover a sum exceeding the amount to which the jurisdiction of the County Court in that Admiralty cause is limited by this Act, and also if any person without agreement shall, except by order as aforesaid, take proceedings as to salvage in the High Court of Admiralty, or in any Superior Court, in respect of property saved, the value of which when saved does not exceed one thousand pounds, he shall not be entitled to costs, and shall be liable to be condemned in costs, unless the judge of the High

Restrictions on proceedings in the Court of Admiralty or Superior Court.

(*s*) *Cargo ex Argos, The Hewsons*, L. R. 5 P. C. 134; 1 Asp. Mar. Law Cas. 519.

(*t*) *The Nuova Raffaellina*, L. R. 3 A. & E. 483.

(*u*) 31 & 32 Vict. c. 71, s. 4.

§ 543. Court of Admiralty or of a Superior Court before whom the cause is tried or heard shall certify that it was a proper Admiralty cause to be tried in the High Court of Admiralty of England, or in a Superior Court.

Right to costs. The right to costs under this section depends on the amount *recovered*, and therefore, although a larger sum may be claimed, yet if the amount recovered does not exceed the limit of the jurisdiction, the plaintiff is not entitled to costs. Payment of money into Court, and acceptance out of Court, is a recovery within the meaning of this section (*x*).

Payment of costs. There are two modes of avoiding being condemned in costs in proceedings which might have been taken in the County Court. A plaintiff may apply to the Admiralty Court for an order to proceed there, before proceedings are instituted, or the Court may certify for costs at the end of the hearing. This section only gives power to grant orders to proceed in the Admiralty Court before any proceedings have been instituted (*y*).

Salvage suits and bonds. Where the value of property saved is less than 1000*l*., but a salvage suit is instituted for more than 300*l*., such suit may properly be tried in the Admiralty Court (*z*). As it is doubtful whether County Courts can enforce salvage bonds given to receivers of wreck (see s. 448, p. 372), leave will be given to proceed in the Admiralty Court in such case (*a*).

Judge as arbitrator. Section 458 of the principal Act enacts, that in certain cases a reasonable amount of salvage shall be paid, and by s. 460, if the sum claimed does not exceed 200*l*., disputes are to be referred to the arbitration of two justices of the peace, or (*b*) to a County Court judge. This latter provision relating to the County Court judge must be construed with the enactment that restricts his jurisdiction to cases when the value of the property salved does not exceed 1000*l*. Thus where the sum claimed exceeds 200*l*., but the value of the property salved is less than 1000*l*., a County Court judge has jurisdiction. And when parties appear before him as an arbitrator, in matters relating to the Merchant Shipping Acts, the ordinary rules of the County Court are to be adopted so far as they are applicable (*c*).

Assessors.

Assessors. The County Court judge may, in causes of salvage, towage, or collision, if he thinks fit, or on the request of either party, summon to his assistance two nautical (*d*) or two mercantile assessors (*e*).

Arrest of ship. He may also order the arrest of a vessel if there is evidence that it is probable she will be removed out of the jurisdiction (*f*).

Appeals.

Security for costs. An appeal formerly lay to the Admiralty Court, by permission of the County Court judge, on security for costs being given (*g*). The security

(*x*) *Hewitt* v. *Corry*, 39 L. J. Q. B. 279.
(*y*) *The Loretta*, 1 Asp. Mar. Law Cas. 19; 24 L. T. N. S. 605; *The Beaumaris Castle*, 40 L. J. (Ad.) 41.
(*z*) *The Empress*, L. R. 3 A. & E. 502.
(*a*) *The John Evans*, 2 Asp. Mar. Law Cas. 234.
(*b*) 25 & 26 Vict. c. 63, s. 49.
(*c*) *Beadnell* v. *Beeson*, 37 L. J. Q. B. 171; *The William and John*, Lush. 583.
(*d*) 31 & 32 Vict. c. 71, s. 11.
(*e*) 32 & 33 Vict. c. 51, s. 5.
(*f*) 31 & 32 Vict. c. 71, s. 22.
(*g*) 31 & 32 Vict. c. 71, s. 26.

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had to be given in the County Court and not in the Admiralty Court, and before the appeal was lodged in the registry (*h*). By the Judicature Act, 1873 (*i*), all appeals from County Courts may be heard and determined by Divisional Courts of the High Court. But by s. 42 of that Act, "all causes or matters which if this Act had not passed would have been within the exclusive cognisance of the High Court of Admiralty shall be assigned to the present judge of the said Admiralty Court (*k*) during his continuance in office as a judge of the High Court." As before the Judicature Acts, Admiralty appeals from County Courts were within the exclusive cognisance of the Admiralty Court, it has been held that appeals from them still lie to the above judge and not to a Divisional Court (*l*). This view is supported by the fact that the County Court Act, 1875 (*m*), which was passed a little later than the Judicature Act, 1875 contemplates the Admiralty Court as the only Court of Appeal.

Appeals lie to the present Admiralty Judge.

Appeals are not allowed, if before the decree is made, the parties have agreed by a memorandum signed by them, or by their solicitors or agents, that the decree or order shall be final (*n*).

Further Appeal.

38 & 39 Vict. c. 50, s. 10.—There shall be no appeal from a decree or order of the High Court of Admiralty of England made on appeal from the County Court when such decree or order affirms the judgment of the County Court, except by express permission of the Judge of the High Court of Admiralty. When upon an appeal the High Court of Admiralty alters the judgment of the County Court, no leave to appeal to Her Majesty in Council shall be necessary (*o*).

As to appeals to the Queen in Council in Admiralty cases.

It is presumed the same rule applies with respect to going to the Court of Appeal, as such appeals do not now go to the Privy Council. The Admiralty Court Judge will allow an appeal in the following cases only: Where the law is doubtful or novel in its application; where the facts are such as to leave a substantial doubt upon the mind of the Court whether the conclusion at which it has arrived be right; and where the pecuniary interest is large (*p*). No appeal shall be allowed unless the amount decreed or ordered to be due exceeds 50*l*. (*q*); but this only applies when an amount has been decreed, or ordered to be due (*r*). Cross suits that have been heard together, must be treated as separate with respect to the institution of appeals (*s*).

Appeals to Court of Appeal.

When appeals will be allowed.

38 & 39 Vict. c. 50, s. 11.—Where an Admiralty cause has been heard in the County Court, with the assistance of nautical assessors, Elder Brethren of the Trinity House shall be summoned to assist on the hearing of an appeal by the High Court of Admiralty, if either party shall re-

In what cases assessors shall be summoned.

(*h*) *The Forest Queen*, L. R. 3 A. & E. 302.
(*i*) 36 & 37 Vict. c. 66, s. 45.
(*k*) Sir Robert Phillimore.
(*l*) *The Two Brothers*, 1 P. D. 55.
(*m*) 38 & 39 Vict. c. 50, ss. 10, 11.
(*n*) 31 & 32 Vict. c. 71, s. 28.
(*o*) 38 & 39 Vict. c. 50, s. 10.
(*p*) *The Samuel Laing*, L. R. 3 A. & E. 285.
(*q*) 31 & 32 Vict. c. 71, s. 31.
(*r*) *The Doctor Van Thunnen Tellow*, 17 W. R. 899.
(*s*) *The Elizabeth*, L. R. 3 A. & E. 38.

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quire the same, and the Judge of the High Court shall be of opinion that the assistance of the Elder Brethren is necessary or desirable.

Cinque Ports.

In cases which arise within the jurisdiction of the Cinque Ports (see under s. 460, p. 386), causes may be transferred by the County Court, and appeals made to the Court of Admiralty of the Cinque Ports (*t*).

Vice Admiralty Courts.

Jurisdiction.

Vice Admiralty Courts are established in various parts of Her Majesty's dominions (see below). Their jurisdiction extends to the following matters (*u*) :—

Wages.

(1.) Claims for seamen's wages. Such claims must be for wages due on the ordinary mariner's contract, and must be such as would have been within the jurisdiction of the Admiralty Court, before the Admiralty Court Act, 1861. If the claim is on a special contract, differing from the ordinary seaman's contract, a Vice Admiralty Court cannot entertain it (*x*). Dr. Lushington has said that "none of the decided cases have defined specially what is a special contract in such cases" (*y*). Seamen engaged for a voyage or engagement, to terminate in the United Kingdom, cannot sue in any court abroad for their wages, unless discharged as required by the principal Act (see s. 190, p. 172).

Special contract.

Master's wages and disbursements.

(2.) Claims for master's wages, and for his disbursements on account of the ship. Such claims must, however, exceed 50*l.*, for by s. 189 of the principal Act (see p. 171), no suit for the recovery of wages under the sum of 50*l.* shall be instituted in any Vice Admiralty Court, except in certain cases.

Pilotage.

(3.) Claims in respect of pilotage. The Vice Admiralty Court of Lower Canada has held that it has no jurisdiction in a suit for pilotage, where there has been a previous judgment of the Trinity House at Quebec upon the same cause of demand (*z*).

Salvage.

(4.) Claims in respect of salvage of any ship, or of life, or goods therefrom.

Towage.

(5.) Claims in respect of towage. The payment of reasonable towage can be enforced, but a Vice Admiralty Court cannot enforce an agreement to employ a particular steam tug, either for a definite or an indefinite quantity of work (*a*).

Damage.

(6.) Claims for damage done by any ship. This is not necessarily damage done by any ship to any other ship, but includes any damage caused by a ship. Thus, the Vice Admiralty Court of Halifax entertained a case where a ship damaged a wharf in the harbour of Halifax (*b*).

Bottomry.

(7.) Claims in respect of bottomry or respondentia bonds. It has recently been held in the Vice Admiralty Court of Halifax that a bond given by the owner in his own country cannot be enforced against the ship itself (*c*). It was formerly thought that Vice Admiralty Courts

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(*t*) 31 & 32 Vict. c. 71, s. 33.

(*u*) The "Vice-Admiralty Courts Act, 1863," 26 Vict. c. 24, s. 10.

(*x*) *The City of Petersburg*, 2 Stuart, Vice Ad. Rep. (Quebec), App. 343.

(*y*) *The Ribly Grove*, 2 W. Rob. 61 ; see *The Isabella*, 2 W. Rob. 241 ; *The Mona*, 1 W. Rob. 141 ; *The Tecumseh*, 3 W. Rob. 109.

(*z*) *The Phœbe*, 1 Stuart, Vice Ad. Rep. (Quebec), 59.

(*a*) *The British Lion*, 2 Stuart, Vice Ad. Rep. (Quebec), 114.

(*b*) *The Chase*, 2 Stuart, Vice Ad. Rep. (Quebec), App. 361.

(*c*) *The Three Sisters*, 2 Stuart, Vice Ad. Rep. (Quebec), App. 370.

could enforce such a bond (*d*), and the American Courts do exercise such a jurisdiction (*e*).

Mortgage.

(8.) Claims in respect of any mortgage where the ship has been sold by a decree of the Vice Admiralty Court, and the proceeds are under its control.

Ownership.

(9.) Claims between the owners of any ship registered in the possession in which the Court is established, touching the ownership, possession, employment, or earnings of such ship. As causes of possession may be decided, these Courts have the right of deciding incidental questions which arise in such causes; and thus a ship may be detained at the instance of the real owner against a wrong-doer (*f*).

Necessaries.

(10.) Claims for necessaries supplied in the possession in which the Court is established, to any ship of which no owner or part-owner is domiciled within the possession at the time of the necessaries being supplied (see Part IX. p. 419, as to Necessaries).

Building and equipping.

(11.) Claims in respect of the building, equipping, or repairing within any British possession of any ship of which no owner or part-owner is domiciled within the possession at the time of the work being done.

Vice Admiralty Courts also have jurisdiction (*g*):—

Royal navy.

(1.) In all cases of breach of the regulations and instructions relating to Her Majesty's navy at sea.

Droits.

(2.) In all matters arising out of droits of Admiralty.

As to matters arising beyond limits of colony.

By 26 Vict. c. 24, s. 13, the jurisdiction of the Vice Admiralty Courts, except where it is expressly confined by this Act to matters arising within the possession in which the Court is established, may be exercised, whether the cause or right of action has arisen within or beyond the limits of such possession.

Vice Admiralty Courts possess no more than the ordinary Admiralty jurisdiction (*h*).

Want of jurisdiction.

If proceedings are taken over which the Court has no jurisdiction, the whole is *coram non judice* (*i*); and the sentence being a nullity, is at any time impugnable (*k*). According to the American decisions, when the subject of the suit is without the jurisdiction of the Court, consent of parties cannot confer jurisdiction; and when it is established that a Vice Admiralty Court cannot entertain a cause, the suit will be dismissed without costs (*l*).

Appeals.

No appeal, save from final sentence or order.

26 Vict. c. 24, s. 22.—The appeal from a decree of, or order of, a Vice Admiralty Court, lies to Her Majesty in Council; but no appeal shall be allowed, save by permission of the Judge, from any decree or order not having the force or effect of a definitive sentence or final order.

(*d*) *The Royal Arch*, Swa. 277.
(*e*) *The Draco*, 2 Sumner (Amer. Rep.), 157.
(*f*) *The Haidee*, 2 Stuart, Vice Ad. Rep. (Quebec), 31; *The Mary and Dorothy*, 1 Stuart, 186.
(*g*) 26 Vict. c. 24, s. 11.
(*h*) *The Australia*, Swa. 488.
(*i*) *Laurence* v. *Creckett*, 2 T. R. 653.
(*k*) *Menetone* v. *Gibbons*, 3 T. R. 269.
(*l*) *The Margaret Stevenson*, 2 Stuart, Vice Ad. Rep. (Quebec), 192.

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Appeal to be made within six months. Existing Courts.

26 Vict. c. 24, s. 23.—The time for appealing from any decree or order of a Vice Admiralty Court shall, notwithstanding any existing enactment to the contrary, be limited to six months from the date of the decree or order appealed from; and no appeal shall be allowed where the petition of appeal to Her Majesty shall not have been lodged in the registry of the High Court of Admiralty and of appeal within that time, unless Her Majesty in Council shall, on the report and recommendation of the Judicial Committee of the Privy Council, be pleased to allow the appeal to be prosecuted, notwithstanding that the petition of appeal has not been lodged within the time prescribed.

Vice Admiralty Courts are established at the following places (*m*) :—

Antigua, and Montserrat.
Bahamas.
Barbadoes.
Bermuda.
British Columbia.
British Guiana.
British Honduras.
Calcutta.
Cape of Good Hope.
Ceylon.
Dominica.
Falkland Islands.
Gambia River.
Gibraltar.
Gold Coast.
Grenada.
Hong Kong.
Jamaica.
Labuan.
Lagos.
Lower Canada (otherwise Quebec).
Malta.
Mauritius.
Montserrat.
Natal.
Nevis.
New Brunswick.
Newfoundland.
New South Wales.
New Zealand.
Nova Scotia (otherwise Halifax).
Prince Edward Island.
Queensland.
Saint Christopher.
Saint Helena.
Saint Lucia.
Saint Vincent.
Sierra Leone.
Strait's Settlements.
South Australia.
Tasmania (formerly called Van Dieman's Land).
Tobago.
Trinidad.
Vancouver's Island.
Victoria.
Virgin Islands (otherwise Tortola).
Western Australia.

Consular Courts (*Slave Trade Jurisdiction only*).

Aden.
Madagascar.
Muscat.
Zanzibar.

Her Majesty may establish a Vice-Admiralty Court in a possession having legislative powers.

By the Vice Admiralty Courts Act Amendment Act, 1867 (30 & 31 Vict. c. 45), s. 16, It shall be lawful for Her Majesty to empower the Admiralty by commission under the Great Seal, to establish one or more Vice Admiralty Courts in any British possession, notwithstanding that such possession may have previously acquired independent legislative powers; and the jurisdiction and authority of all the existing Vice Admiralty Courts are hereby declared to be confirmed, to all intents and purposes, notwithstanding that the possession in which any such Court

(*m*) 26 Vict. c. 24, Schedule A; and see Navy List, 1876, p. 248.

has been established, may at the time of its establishment have been in possession of legislative powers. § 543.

Appointment of Judge.

Appointment of vice-admiral, judge, and officers of Vice-Admiralty Court.

39 & 40 Vict. c. 59 (the Appellate Jurisdiction Act), s. 23.—Whereas by the "Vice Admiralty Courts Act, 1863," it is enacted, that "nothing in this Act contained shall be taken to affect the power of the Admiralty to appoint any vice-admiral, or any judge, registrar, marshal, or other officer of any Vice Admiralty Court, as heretofore, by warrant from the Admiralty, and by letters patent issued under the seal of the High Court of Admiralty of England:"

And whereas since the commencement of the Supreme Court of Judicature Acts, 1873 and 1875, doubts have arisen with respect to the exercise of the said power of the Admiralty, and it is expedient to remove such doubts; Be it therefore enacted as follows:

Any power of the Admiralty to appoint or cancel the appointment of a vice admiral, or a judge, registrar, marshal, or other officer of a Vice Admiralty Court, may, after the passing of this Act, be exercised by some writing under the hands of the Admiralty, and the seal of the office of Admiralty, and in such form as the Admiralty from time to time direct.

Every appointment so made shall have the same effect, and every vice-admiral, judge, registrar, marshal, and other officer so appointed shall have the same jurisdiction, power, and authority, and be subject to the same obligation, as if he had been appointed before the commencement of the Supreme Court of Judicature Acts, 1873 and 1875, under the seal of the High Court of Admiralty of England.

"Admiralty" in this section means the Lord High Admiral, or the commissioners for executing his office, or any two of such commissioners.

Foreign Courts.

Admiralty Courts administer international law.

Admiralty Courts are established and maintained by all civilized nations possessing any mercantile marine, and their existence greatly facilitates the development and continuance of commerce. Their decisions in general profess to be founded on the law of nations, but unfortunately, from the indefiniteness of that law, and from the conflict of the municipal laws of various countries, there is no uniform system of maritime jurisprudence prevalent throughout the civilized world. It therefore is sometimes a difficult question to ascertain what effect should be given to the decisions of foreign courts. There is a great distinction in this respect between proceedings *in rem* and *in personam*, and as maritime questions when tried by foreign courts are almost always by proceedings *in rem*, they will be alone considered here.

Foreign decisions upheld, if possible. Proceedings *in rem*.

The Courts of this country endeavour to uphold the decisions of foreign tribunals when such decisions have been rightly obtained. It is the general rule as laid down by Mr. Justice Story (*n*), that such a judgment is conclusive "when there have been proceedings *in rem* as to movable property within the jurisdiction of the Court pronouncing the judgment (*o*). Whatever it settles as to the right or title, or whatever

(*n*) Conflict of Laws, s. 592.
(*o*) *Rose* v. *Himely*, 4 Cranch (Amer. Rep.), 241.

§ 543. disposition it makes of the property by sale, revendication, transfer, or other act, will be held valid in every other country where the question comes directly or indirectly in judgment before any other foreign tribunal. But this doctrine, however, is always to be understood with this limitation, that the judgment has been obtained *bonâ fide* and without fraud; for if fraud has intervened, it will doubtless avoid the force and validity of the sentence (*p*). So it must appear that there have been regular proceedings to found the judgment or decree; and that the parties in interest *in rem* have had notice or an opportunity to appear and defend their interests, either personally or by their proper representatives, before it was pronounced; for the common justice of all nations requires that no condemnation should be pronounced before the party has an opportunity to be heard" (*q*). "We think the inquiry is," said Mr. Justice Blackburn, in giving an opinion in the House of Lords (*r*), "first, whether the subject-matter was so situated as to be within the lawful control of the State, under the authority of which the Court sits; and, secondly, whether the Sovereign authority of that State has conferred on the Court jurisdiction to decide as to the disposition of the thing, and the Court has acted within its jurisdiction. If these conditions are fulfilled, the adjudication is conclusive against all the world."

As the judgment is not conclusive unless the conditions are fulfilled, it follows that the Court in which the foreign judgment is pleaded, may inquire into the fact of whether the conditions were fulfilled (*s*). In Admiralty proceedings the only question of jurisdiction is the power of the Court over the thing, the subject-matter before them, without regard to the persons who may have an interest in it (*t*); and such Courts have a rightful jurisdiction founded on the actual or constructive possession of the subject-matter (*u*).

Jurisdiction defined.

Jurisdiction has been defined by the Supreme Court of the United States to be the power to hear and determine the subject-matter in controversy between parties to a suit, to adjudicate or exercise any judicial power over them (*x*). When the law of the country in which the Court is located has conferred this power as regards maritime matters on the Court, and the ship or subject-matter is in its possession, the above conditions are fulfilled, and the judgment then binds all the world. It is unnecessary in such proceedings that the Court shall bring the parties within reach of its process (*y*). The judgment is binding, even though it appears that the Court based its decision on a mistaken idea of English law (*z*). Courts of law can only be expected to know the laws of their own country, the laws of other countries are facts which must be cor-

Judgment founded on mistake of English law.

(*p*) *Williams* v. *Amroyd*, 7 Cranch (Amer. Rep.), 423.
(*q*) *Sawyer* v. *Maine Fire Insurance Co.*, 12 Mass. (Amer. Rep.) 291; *Monroe* v. *Douglas*, 4 Sandford (Amer. Rep.), 126, an important case.
(*r*) *Castrique* v. *Imrie*, L. R. 4 H. L. 429.
(*s*) *Rose* v. *Himely*, 4 Cranch (Amer. Rep.), 269.
(*t*) *Grignon* v. *Aston*, 2 Howard (Amer. Rep.), 338.
(*u*) Story's Conflict of Laws, s. 592.
(*x*) *State of Rhode Island* v. *State of Massachusetts*, 12 Peters (Amer. Rep.), 718.
(*y*) *Monroe* v. *Douglas*, 4 Sandford (Amer. Rep.), 182.
(*z*) *Castrique* v. *Imrie*, L. R. 4 H. L. 414.

rectly proved by the party who wishes to avail himself of them. The tribunal must receive and consider all the evidence of foreign laws which is available, and *bonâ fide* determine on that as well as it can what the foreign law is (*a*). (See under s. 62, p. 65, as to the statutory means provided for ascertaining foreign laws.)

§§ 543, 544.

PART XI.

MISCELLANEOUS.

Lascars and Indian Sailors.

544. It shall be lawful for any master or owner of a ship, or his agent, to enter into contracts with Lascars or natives of the territories of the East India Company, binding them to proceed to any port or ports in the Australian colonies either as seamen or as passengers, and there to engage themselves as seamen in any ship which may happen to be there and to be bound to the United Kingdom or to any other part of Her Majesty's dominions; provided that every such contract shall be in such form, and shall contain such provisions, and shall be executed in such manner, and under such conditions for securing the return of such Lascars or natives to their own country, and for other purposes, as the Governor-General of India in Council, or the governors of the respective Presidencies in which the contract is made, in council, may direct; and if any Lascar or other person who has bound himself by any such contract is, on arriving in any of the said colonies, required to enter into an agreement to serve as a seaman in any ship bound for the United Kingdom, or to any other part of Her Majesty's dominions, and if it is certified by some officer appointed for that purpose by the governor of the said colony that such agreement is a proper agreement in all respects for such Lascar or other person to enter into, and is in accordance with the original contract, and that the ship to which such agreement relates is a proper ship for such Lascar or other person to serve in, and is properly supplied with provisions, and that there is

Contracts may be made with natives in India under certain conditions, binding them to go to Australia, and thence to serve in other ships to the United Kingdom.

(*a*) *Di Sora* v. *Phillips*, 10 H. L. C. 624.

§ 544. not in the opinion of such officer any objection to the full performance of the said contract, such Lascar or other person shall be bound to enter into the said agreement, and to serve as a seaman in the ship to which it relates, and shall thereupon be deemed to be for all purposes one of the crew of the ship; and if he refuses to enter into such agreement, he shall, notwithstanding such refusal, be liable to the same consequences, and be dealt with in all respects in the same manner, as if he had voluntarily entered into the same; and for every Lascar or other person in respect of whom such certificate is applied for, the person applying for the same shall pay to such officer as aforesaid such fee as the governor of the colony may appoint.

Contracts may be made with natives in India, under certain conditions, binding them to go to the United Kingdom, and then to serve in other ships back to India or elsewhere.

18 & 19 Vict. c. 91, s. 23.—It shall be lawful for any master or owner of a ship or his agent to enter into agreements with Lascars or natives of the territories of the East India Company, binding them to proceed to any port or ports of the United Kingdom, either as seamen or as passengers, and there to enter into a further agreement to serve as seamen in any ship which may happen to be there, and to be bound to any port in the territories of the East India Company; provided, that every such original agreement shall be made in such form, and shall contain such provisions, and shall be executed in such manner, and under such conditions for securing the return of such Lascars or natives to their own country, and for other purposes, as the Governor General of India in Council, or the governors of the respective presidencies in which the original agreement is made, in council may direct: and if any Lascar or other person who has bound himself by any such original agreement is, on arriving at the United Kingdom, required to enter into a further agreement to serve as a seaman in any ship bound to any port in the territories of the East India Company, and if it is certified by some officer appointed for that purpose by the East India Company that such further agreement is a proper agreement in all respects for such Lascar or other person to enter into, and is in accordance with the original agreement, and that the ship to which such further agreement relates is in all respects a proper ship for such Lascar or other person to serve in, and that there is not, in the opinion of such officer, any objection to the full performance of the said original agreement, such Lascar or other person shall be deemed to be engaged under such further agreement, and to serve as a seaman in the ship to which it relates, and shall thereupon be deemed to be for all purposes one of the crew of the ship; and for every Lascar or other person in respect of whom such cer-

tificate is applied for, the person applying for the same shall pay to such officer as aforesaid such fee as the East India Company may appoint, not exceeding ten shillings.

Relief of destitute Lascars.

18 & 19 Vict. c. 91, s. 22.—It shall be the duty of the East India Company to take charge of and send home or otherwise provide for all persons, being Lascars or other natives of the territories under the government of the said Company, who are found destitute in the United Kingdom; and if any such person is relieved and maintained by any guardians, overseers, or other persons administering the relief of the poor, such overseers, guardians, or other persons may, by letter sent through the post or otherwise, give notice thereof in writing to the Secretary of the Court of Directors of the East India Company, specifying, so far as is practicable, the following particulars; viz.,

1. The name of the person so relieved or maintained:
2. The presidency or district or part of the territories of the East India Company of which he professes to be a native:
3. The name of the ship in which he was brought to the United Kingdom:
4. The port or place abroad from which such ship sailed, and the port or place in the United Kingdom at which such ship arrived, when he was so brought to the United Kingdom, and the time of such arrival:

And the said East India Company shall repay to the said overseers, guardians, or other persons, out of the revenues of the said Company, all monies duly expended by them in relieving or maintaining such destitute person, after the time at which such notice aforesaid is sent or otherwise given.

See, also, as to natives of Asia, Africa, &c., being left destitute, under s. 213, p. 190.

545. *This section provides that nothing in the Act shall repeal or alter anything in the now repealed "Passengers Acts."*

Corporations, &c., may grant site for sailors' homes.

546. The municipal corporation of any borough, being a seaport in the United Kingdom, and any body corporate, association, or trustees in any such seaport, existing or constituted for any public purposes relating to the government or benefit of persons engaged in the British merchant service, or to the management of docks and harbours, or for any other public purposes connected with shipping or navigation, may, with the consent of Her Majesty's Secretary of State for the Home Department, appropriate any lands vested in them or in trustees for them as a site or sites for a sailors' home or sailors' homes,

§§ 546-548.

and may for that purpose either retain and apply the same accordingly, or convey the same to trustees, with such powers for appointing new trustees and continuing the trust as they think fit.

Power of colonial legislatures to alter provisions of Act.

547. The legislative authority of any British possession shall have power, by any Act or Ordinance, confirmed by Her Majesty in Council, to repeal, wholly or in part, any provisions of this Act relating to ships registered in such possession; but no such Act or Ordinance shall take effect until such approval has been proclaimed in such possession, or until such time thereafter as may be fixed by such Act or Ordinance for the purpose.

Expenses incurred by Commissioners of Customs to be paid out of the Consolidated Customs.

548. All expenses incurred by the Commissioners of Customs in the conduct of suits or prosecutions, or otherwise in carrying into effect the provisions of this Act, shall be considered as expenses having reference to the revenue of customs, and shall be paid out of the Consolidated Customs; but the Board of Trade may, with the consent of the Treasury, repay out of the Mercantile Marine Fund all or any part of such of the expenses so paid as are by the provisions of this Act chargeable on the said fund.

Customs Laws.

The statute laws relating to customs, which up to this year (1876) had filled 600 folio pages in various parts of the statute books, are now consolidated into one Act of 290 sections—the "Customs Consolidation Act, 1876" (39 & 40 Vict. c. 36).

It has therefore been thought needless to insert any provisions relating to customs in this work, now that there is no difficulty in ascertaining what the statute law may be on any particular point.

Delivery of Goods and Lien for Freight.

The enactments under this heading, although they do not relate to what is strictly the scope of this work, are here inserted because they form part of the "Merchant Shipping Act, 1862." As to the definitions of the terms used below, see s. 2, p. 6.

Power to shipowner to enter and land goods in default of entry and landing by owner of goods.

25 & 26 Vict. c. 63, s. 67.—Where the owner of any goods imported in any ship from foreign parts into the United Kingdom fails to make entry thereof, or having made entry thereof to land the same or take delivery thereof and to proceed therewith with all convenient speed, by the times severally hereinafter-mentioned, the shipowner may make entry of and land or unship the said goods at the times, in the manner, and subject to the conditions following; (that is to say)

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The object of this section is to provide for unloading the ship without undue delay. Its application is restricted to goods from foreign parts, and to ports of the United Kingdom, but any shipowner, whether British or foreign, may avail himself of it. It has been held that the word "failed" need not be taken to imply wilful default in the cargo owner; but that upon the true construction of the section the shipowner is at liberty to land the goods under it, whenever the delivery of them to the owner within proper time has been prevented by the force of circumstances, whether the latter is or is not to blame (*b*).

Time of delivery.

(1.) If a time for the delivery of the goods is expressed in the charter party, bill of lading, or agreement, then at any time after the time so expressed:

(2.) If no time for the delivery of the goods is expressed in the charter party, bill of lading, or agreement, then at any time after the expiration of seventy-two hours, exclusive of a Sunday or holiday, after the report of the ship:

Wharf or warehouse.

(3.) If any wharf or warehouse is named in the charter party, bill of lading, or agreement, as the wharf or warehouse where the goods are to be placed, and if they can be conveniently there received, the shipowner in landing them by virtue of this enactment shall cause them to be placed on such wharf or in such warehouse:

(4.) In other cases the shipowner in landing goods by virtue of this enactment shall place them in or on some wharf or warehouse on or in which goods of a like nature are usually placed; such wharf or warehouse being, if the goods are dutiable, a wharf or warehouse duly approved by the commissioners of customs for the landing of dutiable goods:

Offer of owner to land goods.

(5.) If at any time before the goods are landed or unshipped the owner of the goods is ready and offers to land or take delivery of the same, he shall be allowed so to do, and his entry shall in such case be preferred to any entry which may have been made by the shipowner:

(6.) If any goods are, for the purpose of convenience in assorting the same, landed at the wharf where the ship is discharged, and the owner of the goods at the time of such landing has made entry and is ready and offers to take delivery thereof, and to convey the same to some other wharf or warehouse, such goods shall be assorted at landing, and shall if demanded be delivered to the owner thereof within twenty-four hours after assortment; and the expense of and consequent on such landing and assortment shall be borne by the shipowner:

(7.) If at any time before the goods are landed or unshipped

(*b*) *The Energie, Miedbrodt* v. *Fitzsimon*, L. R. 6 P. C. 316.

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the owner thereof has made entry for the landing and warehousing thereof at any particular wharf or warehouse other than that at which the ship is discharging, and has offered and been ready to take delivery thereof, and the shipowner has failed to make such delivery and has also failed at the time of such offer to give the owner of the goods correct information of the time at which such goods can be delivered, then the shipowner shall, before landing or unshipping such goods under the power hereby given to him, give to the owner of the goods or of such wharf or warehouse as last aforesaid twenty-four hours notice in writing of his readiness to deliver the goods, and shall, if he lands or unships the same without such notice, do so at his own risk and expense.

Intention of the Act.

These and the following provisions are designed both to give the master the means of discharging the cargo, retaining his lien, and to give the cargo owner the means of obtaining his goods by the deposit of a sum sufficient to cover the master's claim. But they do not extend to the lien. The lien for the warehouse rent, and charges occasioned by a landing, under the 67th section, is another and distinct lien created by the 76th section (see p. 469) (c).

If, when goods are landed, the shipowner give notice for that purpose, the lien for freight is to continue.

25 & 26 Vict. c. 63, s. 68.—If, at the time when any goods are landed from any ship and placed in the custody of any person as a wharf or warehouse owner, the shipowner gives to the wharf or warehouse owner notice in writing that the goods are to remain subject to a lien for freight or other charges payable to the shipowner to an amount to be mentioned in such notice, the goods so landed shall, in the hands of the wharf or warehouse owner, continue liable to the same lien, if any, for such charges as they were subject to before the landing thereof: and the wharf or warehouse owner receiving such goods shall retain them until the lien is discharged as hereinafter mentioned, and shall, if he fail so to do, make good to the shipowner any loss thereby occasioned to him.

If the master wilfully inserts in his notice a sum which he knows to be in excess of that for which he had a lien before delivery, he not only injuriously affects the cargo owner, by compelling him to deposit more than the statute requires, in order to release his goods, but intends to produce that result by duress of the goods; and thus the delivery to the warehouse keeper is tantamount to a wrongful detention of the goods, and, as such, an actionable breach of duty. Although the 69th section gives the cargo owner the means of releasing his goods otherwise than by a deposit of the sum specified in the notice, viz., by obtaining from the

(c) *The Energie*, L. R. 6 P. C. 316.

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shipowner either a receipt for the amount claimed as due, or a release of freight, yet when the goods are wrongfully detained by the shipowner for an excessive demand, it is not to be assumed in his favour that he would give such a receipt or release upon the offer of a sum less than that demanded, and payment to the shipowner under protest would put the cargo owner in a worse position than he would be by a deposit of the sum claimed; since, in the latter case, the shipowner would have to establish his claim *ultra* the amount admitted by proceedings under the 72nd section; whereas, in an action to recover the money paid under protest the burden of proof would lie on the plaintiff, the cargo owner (*d*).

Lien to be discharged on proof of payment.

25 & 26 Vict. c. 63, s. 69.—Upon the production to the wharf or warehouse owner of a receipt for the amount claimed as due, and delivery to the wharf or warehouse owner of a copy thereof or of a release of freight from the shipowner the said lien shall be discharged.

Lien to be discharged on deposit with warehouse owner.

25 & 26 Vict. c. 63, s. 70.—The owner of the goods may deposit with the wharf or warehouse owner a sum of money equal in amount to the sum so claimed as aforesaid by the shipowner, and thereupon the lien shall be discharged; but without prejudice to any other remedy which the shipowner may have for the recovery of the freight.

Warehouse owner may at the end of fifteen days, if no notice is given, pay deposit to shipowner.

25 & 26 Vict. c. 63, s. 71.—If such deposit as aforesaid is made with the wharf or warehouse owner, and the person making the same does not within fifteen days after making it give to the wharf or warehouse owner notice in writing to retain it, stating in such notice the sum, if any, which he admits to be payable to the shipowner, or, as the case may be, that he does not admit any sum to be so payable, the wharf or warehouse owner may, at the expiration of such fifteen days, pay the sum so deposited over to the shipowner, and shall by such payment be discharged from all liability in respect thereof.

Course to be taken if notice to retain is given.

25 & 26 Vict. c. 63, s. 72.—If such deposit as aforesaid is made with the wharf or warehouse owner, and the person making the same does within fifteen days after making it give to the wharf or warehouse owner such notice in writing as aforesaid, the wharf or warehouse owner shall immediately apprise the shipowner of such notice, and shall pay or tender to him out of the sum deposited, the sum, if any, admitted by such notice to be payable, and shall retain the remainder or balance, or, if no sum is admitted to be payable, the whole of the sum deposited, for thirty days from the date of the said notice; and at the expiration of such thirty days, unless legal proceedings have in the meantime been instituted by the shipowner against the owner of the goods to recover the said balance or sum or otherwise for the settlement of any disputes

(*d*) *The Energie*, L. R. 6 P. C. 317.

§ 548. which may have arisen between them concerning such freight or other charges as aforesaid, and notice in writing of such proceedings has been served on him, the wharf or warehouse owner shall pay the said balance or sum over to the owner of the goods, and shall by such payment be discharged from all liability in respect thereof.

After ninety days warehouse owner may sell goods by public auction.

25 & 26 Vict. c. 63, s. 73.—If the lien is not discharged, and no deposit is made as hereinbefore mentioned, the wharf or warehouse owner may, and, if required by the shipowner, shall, at the expiration of ninety days from the time when the goods were placed in his custody, or, if the goods are of a perishable nature, at such earlier period as he in his discretion thinks fit, sell by public auction, either for home use or exportation, the said goods or so much thereof as may be necessary to satisfy the charges hereinafter mentioned.

Notices of sale to be given.

25 & 26 Vict. c. 63, s. 74.—Before making such sale the wharf or warehouse owner shall give notice thereof by advertisement in two newspapers circulating in the neighbourhood, or in one daily newspaper published in London and in one local newspaper, and also, if the address of the owner of the goods has been stated on the manifest of the cargo, or on any of the documents which have come into the possession of the wharf or warehouse owner, or is otherwise known to him, give notice of the sale to the owner of the goods by letter sent by the post; but the title of a *bonâ fide* purchaser of such goods shall not be invalidated by reason of the omission to send notice as hereinbefore mentioned, nor shall any such purchaser be bound to inquire whether such notice has been sent.

Monies arising from sale, how to be applied.

25 & 26 Vict. c. 63, s. 75.—In every case of any such sale as aforesaid the wharf or warehouse owner shall apply the monies received from the sale as follows, and in the following order:—

(1.) If the goods are sold for home use, in payment of any customs or excise duties owing in respect thereof:
(2.) In payment of the expenses of the sale:
(3.) In the absence of any agreement between the wharf or warehouse owner and the shipowner concerning the priority of their respective charges, in payment of the rent, rates, and other charges due to the wharf or warehouse owner in respect of the said goods:
(4.) In payment of the amount claimed by the shipowner as due for freight or other charges in respect of the said goods:
(5.) But in case of any agreement between the wharf or warehouse owner and the shipowner concerning the priority of their respective charges, then such charges shall have priority according to the terms of such agreement:

and the surplus, if any, shall be paid to the owner of the goods. § 548.

25 & 26 Vict. c. 63, s. 76.—Whenever goods are placed in the custody of a wharf or warehouse owner under the authority of this Act, the said wharf or warehouse owner shall be entitled to rent in respect of the same, and shall also have power from time to time, at the expense of the owner of the goods, to do all such reasonable acts as in the judgment of the said wharf or warehouse owner are necessary for the proper custody and preservation of the said goods, and shall have a lien on the said goods for the said rent and expenses. Warehouse, owner's rent and expenses.

25 & 26 Vict. c. 63, s. 77.—Nothing in this Act contained shall compel any wharf or warehouse owner to take charge of any goods which he would not be liable to take charge of if this Act had not passed; nor shall he be bound to see to the validity of any lien claimed by any shipowner under this Act. Warehouse owner's protection.

25 & 26 Vict. c. 63, s. 78.—Nothing in this Act contained shall take away or abridge any powers given by any local Act to any harbour trust, body corporate, or persons whereby they are enabled to expedite the discharge of ships or the landing or delivery of goods; nor shall anything in this Act contained take away or diminish any rights or remedies given to any shipowner or wharf or warehouse owner by any local Act. Saving powers under Local Acts.

END OF THE MERCHANT SHIPPING ACTS.

THE

PASSENGERS ACTS.

1855—1870.

(CONSOLIDATED.)

THE "PASSENGERS ACT, 1855," 18 & 19 VICT. C. 119.
THE "PASSENGERS ACT AMENDMENT ACT, 1863," 26 & 27 VICT. C. 51.
THE "PASSENGERS ACT AMENDMENT ACT, 1870," 33 & 34 VICT. C. 95.

WHEREAS it is expedient to amend "The Passengers Act, 1852": Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

§§ 1, 2.

1. *Repealed by the Statute Law Revision Act*, 1875.

Mode of citation.

2. This Act may be cited for all purposes as "The Passengers Act, 1855"; the amendment Act, 1863, may be cited as "The Passengers Act Amendment Act, 1863" (26 & 27 Vict. c. 51, s. 1); and the amendment Act, 1870, may be cited as "The Passengers Act Amendment Act, 1870." These three Acts shall be construed as one (26 & 27 Vict. c. 51, s. 18, and 33 & 34 Vict. c. 95, s. 2).

The Passenger's Contract.

No warranty. Contracts to take due care.

There is no warranty on the part of a carrier of passengers, that he will convey the passengers safely to their journey's end. The contract of such a carrier, and the obligation undertaken by him, are to take due care (including in that term the use of skill and foresight) to carry a

§§ 2, 3.

passenger safely (*a*). He is only responsible, if there has been negligence, or the absence of due care, on his part (*b*).

No warranty of seaworthiness.

As regards ships carrying passengers, there is no absolute warranty of the seaworthiness of the ship. (As to seaworthiness, see s. 291, p. 244.) The owner must do his best to make the vessel seaworthy, by putting her into proper repair, and engaging a competent crew; but he does not undertake to land the passenger safely at all events (*c*).

Time of sailing.

When a vessel is advertised to sail by a certain date, and does not, the shipowner will be entitled to recover, or keep, half the passage-money of a person who refuses to embark after having engaged a passage, unless either time was of the essence of the contract, or the delay in sailing was unreasonable (*d*). In an American case (*e*) damages were awarded because a ship did not call at a pier she was advertised to stop at.

Passage money.

The passage-money must be returned to the passenger in some cases (see sec. 48 of the Passengers Act, p. 510). Where an agreement was made to carry a passenger from London to the West Indies, the passage-money to be paid in London before the commencement of the voyage, and the passenger put his luggage on board in the Thames, meaning himself to embark at Portsmouth, and the ship was lost going round to that place, the passage-money could not be recovered back (*f*). The passage-money was returned and damages awarded to a passenger who had agreed to pay an extra fare for extra accommodation, when it was shown that the ship had been overcrowded, and the stipulated accommodation not provided (*g*). But a substantial injury must be made out, for *de minimis non curat lex*. The master has a lien on the luggage of a passenger for his passage-money, but not on the clothes the passenger is wearing (*h*).

Food.

When no dietary scale has been incorporated in the passenger's contract (see "Passengers Act, 1855," s. 35, p. 501), he is entitled to a reasonable amount of food according to his position as steerage or cabin passenger (*i*); but here also he must suffer some real grievance, as it is not because he does not get so good a dinner as he might have had, that he is therefore to have a right of action against the captain (*k*). Nor will any action lie if the supply of food deteriorates, or is diminished, owing to the unexpected length of the voyage, or from unavoidable accident (*l*).

Definition of terms used in this Act.

3. For the purposes of this Act, the following words and expressions, whenever they occur, shall respectively have the following significations, if not inconsistent with the context or subject matter; (that is to say,) words of one number or

(*a*) *Redhead* v. *Midland Railway Co.*, L. R. 4 Q. B. 381; *Christie* v. *Griggs*, 2 Camp. 81.
(*b*) *Crofts* v. *Waterhouse*, 3 Bing. 319.
(*c*) *Redhead* v. *Midland Railway Co.*, L. R. 4 Q. B. 391.
(*d*) *Yates* v. *Duff*, 5 C. & P. 369; *Cranston* v. *Marshall*, 5 Ex. 395.
(*e*) *Heirn* v. *M'Caughan*, 32 Missis. (Amer. Rep.) 17.
(*f*) *Gillan* v. *Simpkin*, 4 Camp. 421.
(*g*) *The Pacific*, 1 Blatch (Amer. Rep.), 569.
(*h*) *Wolf* v. *Summers*, 2 Camp. 631.
(*i*) Kay, on Shipmasters, II., 823.
(*k*) *Young* v. *Fewson*, 8 C. & P. 55.
(*l*) *Corbin* v. *Leader*, 6 C. & P. 32.

§ 3.

gender shall import both numbers and all genders respectively; the expression "Her Majesty" shall include her heirs and successors. "Her Majesty."

The expression "Consular Officer" shall signify and include Her Majesty's consul general, consul, and vice-consul. "Consular Officer."

The expression "United Kingdom" shall signify Great Britain and Ireland, and the islands of Guernsey, Jersey, Alderney, Sark, Scilly, and Man. "United Kingdom."

The expression "North America" shall signify and include the Bermudas, and all ports and places, on the eastern coast of the continent of North America, or in the islands adjacent or near thereto, or in the Gulf of Mexico north of the Tropic of Cancer. "North America."

The expression "West Indies" shall signify the West India islands, the Bahamas, British Guiana, and Honduras. "West Indies."

The expression "Governor" shall signify the person who for the time being shall be lawfully administering the government of any British colony in which he may be acting. "Governor."

The expression "Statute Adult" shall signify any person of the age of twelve years or upwards, or two persons between the ages of one and twelve years. "Statute Adult."

The expression "Passage" shall include all passages except cabin passages. "Passage."

The expression "Passengers" shall include all passengers except cabin passengers, and except labourers under indenture to the Hudson's Bay Company, and their families, conveyed in ships the property of or chartered by the said company, and no persons shall be deemed cabin passengers unless the space allotted to their exclusive use shall be in the proportion of at least thirty-six clear superficial feet to each statute adult, nor unless they shall be messed throughout the voyage at the same table with the master or first officer of the ship, nor unless the fare contracted to be paid by them respectively shall be in the proportion of at least thirty shillings for every week of the length of the voyage as computed under the provisions of this Act for sailing vessels proceeding from the United Kingdom to any place south of the equator, and of twenty shillings for such vessels proceeding to any place north of the equator, nor unless they shall have been furnished with a duly signed contract ticket according to the form in schedule (K.) of this Act. (*See sec.* 71 *of this Act, p.* 530.) "Passengers."

§§ 3, 4.

"Upper passenger deck."

The expression "upper passenger deck" shall signify and include the deck immediately beneath the upper deck, or the poop or round house and deck house when the number of passengers and cabin passengers carried in such poop, round house, or deck house shall exceed one third of the total number of passengers which such ship can lawfully carry on the deck next below.

"Lower passenger deck."

The expression "lower passenger deck," the deck next beneath the upper passenger deck, not being an orlop deck.

"Ship."

The expression "ship" shall signify any description of sea-going vessel, whether British or foreign.

"Passenger ship."

26 & 27 Vict. c. 51, s. 3.—The term "passenger ship" shall signify every description of sea-going vessel, whether British or foreign, carrying, upon any voyage to which the provisions of the said "Passengers Act, 1855," shall extend, more than fifty passengers, or a greater number of passengers than in the proportion of one statute adult to every thirty-three tons of the registered tonnage of such ships, if propelled by sails, or than one statute adult to every twenty tons, if propelled by steam.

"Master."

The expression "master" shall signify the person who shall be borne on the ship's articles as master, or who, other than a pilot, shall for the time being be in charge or command of any such ship or "passenger ship."

"Emigrant runner."

And the expression "emigrant runner" shall signify every person other than a licensed passage broker or his *bonâ fide* salaried clerk, who within any port or place of shipping, or within five miles of the outer boundaries thereof, for hire or reward, or the expectation thereof, shall directly or indirectly conduct, solicit, influence, or recommend any intending emigrant to or on behalf of any passage broker, owner, charterer, or master of a ship, lodging house or tavern, or shopkeeper, money changer, or other dealer or chapman, for any purpose connected with the preparations or arrangements for a passage, or shall give or pretend to give such intending emigrant any information or assistance in any way relating to emigration.

(As to what the word passenger means, see, also, under s. 379 of the "Merchant Shipping Act, 1854," p. 333.) With regard to the rules to be observed in naming ships, see the "Merchant Shipping Act, 1854," s. 34, p. 32.

To what vessels and

4. This Act shall extend to every "Passenger ship" pro-

voyages this Act extends.

ceeding on any voyage from the United Kingdom to any place out of Europe, and not being within the Mediterranean sea, and on every colonial voyage as hereinafter described, and in the particulars mentioned or referred to in sections one hundred, one hundred and one, and one hundred and two, to every ship bringing passengers into the United Kingdom from any place out of Europe and not being within the Mediterranean sea; but shall not extend to any of Her Majesty's ships of war, nor to any ships in the service of the commissioners for executing the office of Lord High Admiral of the United Kingdom. *The rest of this section is repealed by* 26 & 27 Vict. c. 51, s. 4, *which enacts that,* every steam vessel, whether British, foreign, or colonial, which shall carry passengers other than cabin passengers in sufficient number to bring such vessel within the definition of a passenger ship (*see preceding page*), shall be subject to the provisions of the said Act and of this Act, in like manner as any passenger ship not carrying a mail.

It must be remembered that "'passengers' shall include all passengers *except* cabin passengers" (see s. 3 of this Act, p. 473).

5. *Repealed by the Statute Law Revision Act,* 1875.

Sections 6 *and* 7.

Emigration Commissioners.

By section 6 Emigration Commissioners were appointed to carry out this Act, and by section 7 they were enabled to sue and be sued in the name of their secretary.

These sections are repealed as follows :—

Transfer to Board of Trade of powers and duties of Emigration Commissioners.

35 & 36 Vict. c. 73, s. 5.—The sixth and seventh sections of the Passengers Act, 1855, except so much of the latter section as provides for the immunity of emigration officers, shall be repealed, and all powers and duties vested in or imposed on the Emigration Commissioners by the Passengers Act, 1855, and the Passengers Act Amendment Act, 1863, shall be transferred to and imposed on the Board of Trade.

In the construction and for the purposes of the said Acts, the name of the Board of Trade shall be deemed to be substituted for the name of the Emigration Commissioners and anything which might, if this Act had not passed, have been done by the Emigration Commissioners whether acting independently or under the sanction or authority of one of Her Majesty's principal secretaries of state, may be done by the Board of Trade independently of such sanction or authority.

§§ 7-10.

Board of Trade exempt from liability.

Part of section 7 still unrepealed—Provided always that the said Board of Trade and their secretary, and the emigration officers hereinafter mentioned respectively, shall in no case be personally liable, nor shall the private estate and effects of any of them be liable, for the payment of any moneys or costs or otherwise in respect of any contract made or hereafter to be made by them or any of them, or in respect of any legal or equitable proceedings taken against them or any of them, or for any act, deed, or matter done or executed by them or any of them in their or his official capacity and on the public service.

The Board of Trade is substituted for the Emigration Commissioners throughout this Act, without reference being made to the enactment making the change.

Emigration officers and assistants to act under the Board of Trade, but existing appointments to continue until revoked.

8. In the United Kingdom the Board of Trade, and in Her Majesty's possessions abroad, the respective governors thereof, may from time to time appoint, and the said Board and governors may at pleasure from time to time remove, such emigration officers and assistant emigration officers as they may respectively think necessary, for the purpose of carrying this Act into execution, under the direction of the said Board or governors, as the case may be: Provided, nevertheless, that all existing appointments of emigration officers or immigration agents and of their assistants, as well in the United Kingdom as in Her Majesty's possessions abroad, shall continue in force under this Act until duly revoked.

Duties by assistant or by officer of customs.

9. All powers, functions, and duties to be exercised or performed by any such emigration officer, may be exercised and performed respectively by his assistant, or, at any port where there shall be no such emigration officer or assistant, or in their absence, by the chief officer of customs for the time being at such port.

Facilities to be given to officers for the inspection of ships fitting for passengers.

10. The master of every ship, whether a "passenger ship" or otherwise, fitting or intended for the carriage of passengers, or which shall carry passengers upon any voyage to which this Act extends, shall afford to such emigration officer as aforesaid at any port or place in Her Majesty's dominions, and in the case of British ships to Her Majesty's consular officer at any foreign port or place at which such ship shall be or arrive, every facility for inspecting such ship, and for communicating

with the passengers, and for ascertaining that the provisions of this Act, so far as the same may be applicable to such ships, have been duly complied with; the master of any ship who shall omit or fail to comply with any of the requirements of this section shall be liable to a penalty not exceeding 50*l.*

Penalty.

Arrangements for the Ship.

No passenger ship to clear without certificate from emigration officer, nor until bond be given to the Crown.

11. No ship fitted or intended for the carriage of passengers as a "passenger ship" shall clear out or proceed to sea until the master thereof shall have obtained from the emigration officer at the port of clearance a certificate of clearance under his hand that all the requirements of this Act, so far as the same can be complied with, before the departure of such ship, have been duly complied with, and that such ship is, in his opinion, seaworthy, in safe trim, and in all respects fit for her intended voyage, and that her passengers and crew are in a fit state to proceed, nor until the master shall have joined in executing such bond to the crown as required by the sixty-third section of this Act: Provided, that if such emigration officer shall refuse to grant such certificate, and the owner or charterer of such ship shall appeal in writing to the Board of Trade, such Board shall appoint any two emigration officers, or any two competent persons, at the expense of the appellant, to examine into the matter, and if the persons so appointed shall grant a certificate under their joint hands to the purport hereinbefore required, such certificate shall be held to be of the same effect as if granted by the emigration officer of the port of clearance. (*As to survey, see s.* 19, *p.* 486.)

Forfeiture of ship if master proceeds to sea without certificate of clearance, &c.

26 & 27 Vict. c. 51, s. 13.—If any passenger ship shall clear out or proceed to sea without the master having first obtained such certificate of clearance, or without his having joined in executing such bond to the Crown as by the said "Passengers Act, 1855," are required, or if such ship, after having put to sea, shall put into any port or place in the United Kingdom in a damaged state, and shall leave or attempt to leave such port or place with passengers on board without the master having first obtained such certificate of clearance as is required by section fifty of the said "Passengers Act, 1855," such ship shall be forfeited to the use of Her Majesty, and may be seized by any officer of customs, if found, within two years from the commission of the offence, in

§ 11.

Such ship to be dealt with as if seized under customs laws.

Power to Board of Trade to release ships on payment of a sum of money.

any port or place in Her Majesty's dominions; and such ship shall thereupon be dealt with in the same manner as if she had been seized as forfeited for an offence incurring forfeiture under any of the laws relating to the customs: Provided that it shall be lawful for the Board of Trade to release, if they shall think fit, any such forfeited ship from seizure and forfeiture, on payment by the owner, charterer, or master thereof to the use of Her Majesty, of such sum not exceeding two thousand pounds as the said Board may by any writing specify.

These powers were transfered from a Secretary of State to the Board of Trade by 35 & 36 Vict. c. 73, s. 7.

Appeal on refusal of certificates under the Passengers Acts.

39 & 40 Vict. c. 80, (*part of*) s. 14.—And whereas under sections eleven and fifty of the Passengers Act, 1855, and the enactments amending the same, a passenger ship within the meaning of those sections (in this Act referred to as an emigrant ship) cannot lawfully proceed to sea without a certificate of clearance from an emigration officer, or other officer in those sections mentioned, showing that all the requirements of the said sections and enactments have been complied with, and that the ship is in the officer's opinion seaworthy, and that the passengers and crew are in a fit state to proceed to sea, and otherwise as therein mentioned;

* * * * *

And whereas it is expedient to give in the said cases such appeal as hereinafter mentioned: Be it therefore enacted that—

If a shipowner feels aggrieved,

* * * * *

(2.) by the refusal of a certificate of clearance for an emigrant ship under the above-recited enactments,

* * * * *

the owner may appeal in the prescribed manner to the court of survey for the port or district where the ship for the time being is.

On such appeal the judge of the court of survey shall report to the Board of Trade on the question raised by the appeal, and the Board of Trade, when satisfied that the requirements of the report and the other provisions of the said enactments have been complied with, may,

* * * * *

(2.) In the case of an emigrant ship give, or direct the emigration or other officer to give, a certificate of clearance under the above-mentioned enactments.

* * * * *

Subject to any order made by the judge of the court of

survey, the costs of and incidental to an appeal under this section shall follow the event.

Subject as aforesaid, the provisions of this Act with respect to the court of survey and appeals thereto, so far as consistent with the tenour thereof, shall apply to the court of survey when acting under this section, and to appeals under this section.

Where the survey of a ship is made for the purpose of a declaration or certificate under the above-recited enactments, the person appointed to make the survey shall, if so required by the owner, be accompanied on the survey by some person appointed by the owner, and in such case, if the said two persons agree, there shall be no appeal to the Court of Survey in pursuance of this section.

As to the constitution of the Court of Survey, see under s. 291 of the "Merchant Shipping Act, 1854" (*h*). The parts omitted above are set out under s. 309 of that Act, p. 289, and also on p. 282.

Reference in difficult cases to scientific persons.

39 & 40 Vict. c. 80, s. 15.—If the Board of Trade are of opinion that an appeal under this Act involves a question of construction or design or of scientific difficulty or important principle, they may refer the matter to such one or more out of a list of scientific referees from time to time approved by a Secretary of State, as may appear to possess the special qualifications necessary for the particular case, and may be selected by agreement between the Board of Trade and the appellant, or in default of any such agreement by a Secretary of State, and thereupon the appeal shall be determined by the referee or referees, instead of by the court of survey.

The Board of Trade, if the appellant in any appeal so require and give security to the satisfaction of the Board to pay the costs of and incidental to the reference, shall refer that appeal to a referee or referees so selected as aforesaid.

The referee or referees shall have the same powers as a judge of the court of survey.

Colonial certificates for passenger ships.

39 & 40 Vict. c. 80, s. 17.—Where the legislature of any British possession provides for the survey of and grant of certificates for passenger steamers, and the Board of Trade report to Her Majesty that they are satisfied that the certificates are to the like effect, and are granted after a like survey, and in such manner as to be equally efficient with the certificates granted for the same purpose in the United Kingdom under the Acts relating to Merchant Shipping, it shall be lawful for Her Majesty by Order in Council—

(1.) To declare that the said certificates shall be of the same force as if they had been granted under the said Acts; and

§ 11.

(2.) To declare that all or any of the provisions of the said Acts which relate to certificates granted for passenger steamers under those Acts shall, either without modification or with such modifications as to Her Majesty may seem necessary, apply to the certificates referred to in the Order; and

(3.) To impose such conditions and to make such regulations with respect to the said certificates, and to the use, delivery, and cancellation thereof, as to Her Majesty may seem fit, and to impose penalties not exceeding fifty pounds for the breach of such conditions and regulations.

Provision against double survey in case of passenger steamers and emigrant ships.

39 & 40 Vict. c. 80, s. 18.—In every case where a passenger certificate has been granted to any steamer by the Board of Trade under the provisions of "The Merchant Shipping Act, 1854," and remains still in force, it shall not be requisite for the purposes of the employment of such steamer under the Passengers Acts that she shall be again surveyed in her hull and machinery in order to qualify her for service under the Passengers Act, 1855, and the Acts amending the same; but for the purposes of employment under those Acts such Board of Trade certificate shall be deemed to satisfy the requirements of the Passengers Acts with respect to such survey, and any further survey of the hull and machinery shall be dispensed with, and so long as a steam ship is an emigrant ship, that is, a passenger ship within the meaning of the Passengers Act, 1855 (*see s. 3 of this Act, p. 474*), and the Acts amending the same, and the provisions contained in the said Passengers Acts as to the survey of her hull, machinery, and equipments have been complied with, she shall not be subject to the provisions of The Merchant Shipping Act, 1854, with respect to survey of, and certificate for, passenger steamers, or to the enactments amending the same. (*See s. 303 of the Merchant Shipping Act, 1854, p. 286, et seq.*)

Foreign Ships.

Provision as to survey of foreign passenger steamer or emigrant ship.

39 & 40 Vict. c. 80, s. 19.—Where a foreign ship is a passenger steamer subject to the Merchant Shipping Act, 1854, and the Acts amending the same, or an emigrant ship subject to the Passengers Act, 1855, and the Acts amending the same, and the Board of Trade are satisfied, by the production of a foreign certificate of survey attested by a British consular officer at the port of survey, that such ship has been officially surveyed at a foreign port, and are satisfied that the requirements of the said Acts, or any of them, are proved by such survey to have been substantially complied with, the Board may, if they think fit, dispense with any further survey of the ship in respect of the requirements so complied with, and give

or direct one of their officers to give a certificate, which shall have the same effect as if given upon survey under the said Acts or any of them: Provided that Her Majesty may by Order in Council direct that this section shall not apply in the case of an official survey at any foreign port at which it appears to Her Majesty that corresponding provisions are not extended to British ships.

12. *Repealed by* 26 & 27 Vict. c. 51, s. 12.

Where passengers may be carried.

13. No ship shall carry passengers or cabin passengers on more than two decks; provided, that cabin passengers in a proportion not exceeding one cabin passenger for every one hundred tons of the ship's registered tonnage, or sick persons placed in a hospital, as hereinafter provided, may be carried in a poop or deck house, notwithstanding that passengers are carried on two other decks, and if passengers are carried under the poop or in any round house or deck house, such poop, round house, or deck house shall be properly built and secured to the satisfaction of the emigration officer at the port of clearance: For any breach of this enactment the master of the ship shall for each offence be liable to a penalty not exceeding 500*l.* nor less than 20*l.* sterling.

Penalty.

Rule for determining the number of passengers to be carried.

14. For determining the number of passengers to be carried in any "passenger ship" the following rules shall be observed:

(1.) *Repealed by* 26 & 27 Vict. c. 51, s. 5.

Space check.

(2.) No ship shall carry under the poop, or in the round house or deck house, or on the "upper passenger deck," a greater number of passengers than in the proportion of one statute adult to every fifteen clear superficial feet of deck allotted to their use:

(3.) No ship shall carry on her lower passenger deck a greater number of passengers than in the proportion of one statute adult to every eighteen clear superficial feet of deck allotted to their use: Provided, nevertheless, that if the height between such lower passenger deck and the deck immediately above it shall be less than seven feet, or if the apertures (exclusive of side scuttles) through which light and air shall be admitted together to the lower passenger deck shall be less in size than in the proportion of three square feet to every one hundred superficial feet of the lower passenger deck, no greater number of passengers shall be carried on

§§ 14, 15.

such deck than in the proportion of one statute adult to every twenty-five clear superficial feet thereof:

(4.) No ship, whatever be her tonnage or superficial space of "passengers decks," shall carry a greater number of passengers on the whole than in the proportion of one statute adult to every five superficial feet, clear for exercise, on the upper deck or poop, or (if secured and fitted on the top with a railing or guard to the satisfaction of the emigration officer at the port of clearance) on any round house or deck house:

(5.) In the measurement of the passenger decks, poop, round house, or deck house, the space for the hospital and that occupied by such portion of the personal luggage of the passengers as the emigration officer may permit to be carried there shall be included:

Penalty.

If there shall be on board of any ship at or after the time of clearance a greater number, either of persons or passengers (except by births at sea), than in the proportions respectively hereinbefore mentioned, the master of such ship shall be liable to a penalty not exceeding 20*l.* nor less than 5*l.* sterling for each passenger or person constituting such excess.

Nothing to extend to repeal 16 & 17 Vict. c. 84.

15. Provided nevertheless, That nothing in this Act contained shall extend to repeal or vary an Act passed in the session of Parliament holden in the sixteenth and seventeenth years of the reign of Her present Majesty, chapter eighty-four, intituled "An Act to amend the Passengers Act, 1852, so far as relates to the passages of natives of Asia or Africa, and also passages between the island of Ceylon and certain parts of the East Indies."

Asiatic and African Passengers.

Power for governors of colonies to allow carriage of larger number of Asiatic and African passengers.

16 & 17 Vict. c. 84, s. 1.—It shall be lawful for the governors of Her Majesty's possessions abroad, if they shall think fit, to declare by proclamation that ships intended to pass within the tropics from any ports within their respective governments may convey passengers, being natives of Asia or Africa, after the rate of one for every twelve superficial feet of the passenger deck, instead of one for every fifteen such superficial feet as required by the section aforesaid.

Power for Government of Ceylon to regulate

16 & 17 Vict. c. 84, s. 2.—The restrictions in the fourteenth section of the Passengers Act, 1855, shall not apply to vesse's proceeding on any voyage from any port or place in the Island

of Ceylon to any port or place in the territories under the government of the East India Company in the Gulf of Manar or Palks' Straits, but that it shall be lawful for the governor and legislative council of Ceylon, if they shall so think fit, to regulate by ordinance the number of persons or passengers who may be carried on board of vessels proceeding on any such voyage as last aforesaid.

number of passengers in certain ships.

16. The master of every ship, whether a "passenger ship" or otherwise, carrying passengers on any voyage to which this Act extends, shall, before demanding a clearance for such ship, sign two lists, made out according to the form contained in schedule (B.) hereto annexed, correctly setting forth in the manner therein directed the name and other particulars of the ship, and of every passenger on board thereof; and the said lists, when countersigned by the emigration officer, where there is one at the port, shall be delivered by the master to the officer of the customs from whom a clearance of the said ship shall be demanded, and such officer shall thereupon also countersign and return to the said master one of such lists, hereinafter called "The Master's List;" (*a part of this section relating to returns of births and deaths at sea is repealed by the Births and Deaths Registration Act*, 1874. *The particulars to be entered in the lists, required by that Act, are set out under s.* 274 *of the Merchant Shipping Act*, 1854, *p.* 234). In case of noncompliance with any of the requirements of this section on the part of the master, or if such lists shall be wilfully false, the master shall for each offence be liable to a penalty not exceeding 100*l.* nor less than 5*l.* sterling.

Passengers' lists to be delivered in duplicate by the master before clearance.

See under s. 17, p. 484, for additional particulars required by 26 & 27 Vict. c. 51, s. 6, to be added to the following list.

SCHEDULE (B).

FORM OF PASSENGERS LIST.

Ship's Name.	Master's Name.	Tons per Register.	Aggregate Number of Superficial Feet in the several Compartments set apart for Passengers other than Cabin Passengers.	Total Number of Statute Adults, exclusive of Master, Crew, and Cabin Passengers, which the Ship can legally carry.	Where Bound.

I hereby certify that the Provisions actually laden on board this Ship are sufficient, according to the Requirements of the Passengers Act, for Statute Adults for a Voyage of days.

(Signature)_____Master.

(Date)_____187 .

NAMES AND DESCRIPTIONS OF PASSENGERS.

Ports of Embarkation.	Names of Passengers.	Age of each Adult of 12 Years and upwards.				Children between 1 and 12 Years.		Infants.		Profession, Occupation, or Calling of Passenger.	State whether English, Scotch, or Irish.	Port at which Passengers have contracted to land.
		Married.		Single.								
		Male.	Female.	Male.	Female.	Male.	Female.	Male.	Female.			

SUMMARY.

	Number of Souls.				Equal to Statute Adults.
	English.	Scotch.	Irish.	Total.	
Adults					
Children between 1 and 12 . .					
Infants					
Total					

We hereby certify, that the above is a correct List of the Names and Descriptions of all the Passengers who embarked at the Port of_____.

(Signed)_____ Master.

_____ Emigration Officer.

(Countersigned)_____ Officer of Customs at_____.

(Date)_____187 .

N.B.—Lines should be ruled in the same Form for any Additions to the List after the Ship first clears out; and similar Certificates be subjoined to such Additions according to the Requirements of the Act.

Lists of passengers embarked after clearance to be delivered by master.

17. If at any time after such lists shall have been signed and delivered as aforesaid any additional passenger shall be taken on board, in every such case the master shall, according to the form aforesaid, add to "The Master's List" the names and other particulars of every such additional passenger, and shall also sign a separate list, made out according to the form aforesaid, containing the names and other particulars of every such additional passenger, and such last-mentioned list, when countersigned by the emigration officer, where there is one at the port, shall, together with "the master's list" to which

such addition shall have been made, be delivered to the chief officer of customs as aforesaid, and thereupon such officer shall countersign "the master's list," and shall return the same to the said master, and shall retain the separate list, and so on in like manner whenever any additional passenger or passengers may be taken on board; or if no officer of customs shall be stationed at the port or place where such additional passenger or passengers may be taken on board, the said lists shall be delivered to the officer of customs at the next port or place at which such vessel shall touch or arrive and where any such officer shall be stationed, to be dealt with as hereinbefore mentioned: provided, that when any additional passengers shall be taken on board the master shall obtain a fresh certificate from the emigration officer of the port that all the requirements of this Act have been duly complied with before the ship shall proceed to sea: in case of noncompliance with any of the requirements of this section, the master of such ship shall for each offence be liable to a penalty not exceeding 50*l.* nor less than 5*l.* sterling.

Penalty on non-compliance.

Cabin passengers to be included in passenger lists.

26 & 27 Vict. c. 51, s. 6.—In the passenger lists required by the sixteenth and seventeenth sections of "The Passengers Act, 1855," to be delivered by the master of every ship before demanding a clearance, there shall be set forth, in addition to the other particulars required by "The Passengers Act, 1855," the names of all cabin passengers on board such ships, specifying whether they respectively are under or over twelve years of age, and at what place the passengers and cabin passengers respectively are to be landed, and the Schedule B. to the said Act shall be altered accordingly.

Penalty on persons found on board ships without consent of owners, &c.

18. If any person shall be found on board any passenger ship with intent to obtain a passage therein without the consent of the owner, charterer, or master thereof, such person, and every person aiding and abetting him in such fraudulent intent, shall respectively be liable to a penalty not exceeding 5*l.*, and in default of payment to imprisonment, with or without hard labour, for a period not exceeding three calendar months; and such person so found on board may be taken before any justice of the peace without warrant, and such justice may summarily hear the case, and on proof of the offence convict such offender as aforesaid.

§§ 18, 19.

Limit of penalty on stowaways increased from £5 to £20.

26 & 27 Vict. c. 51, s. 7.—The limit of the penalty imposed by the eighteenth section of "The Passengers Act, 1855," on persons convicted of getting on board any passenger ship, with intent to obtain a passage therein, without the consent of the owner, charterer, or master thereof, and on persons aiding or abetting in such fraudulent attempt shall be extended from 5*l.* to 20*l.*

See also the "Merchant Shipping Act, 1854," s. 258, p. 224.

All passenger ships to be surveyed before clearing out.

19. No "passenger ship" shall clear out or proceed to sea unless she shall have been surveyed, under the direction of the emigration officer at the port of clearance, but at the expense of the owner or charterer thereof, by two or more competent surveyors to be appointed by the Board of Trade for each port at which there may be an emigration officer, and for other ports by the commissioners of customs, nor unless it shall be reported by such surveyors that such "passenger ship" is in their opinion seaworthy, and fit for her intended voyage. The survey shall be made before any part of the cargo is taken on board, except so much as may be necessary for ballasting the ship, and such portion of cargo if laden on board shall be shifted, if required by the emigration officer or surveyors, so as to expose to view successively every part of the frame of the ship.

Penalty on non-compliance.

In case of noncompliance with any of the requirements of this section, the owner, charterer, or master of the ship, or any of them, shall for each offence be liable to a penalty not exceeding 100*l.* nor less than 5*l.* sterling:

Power to owners to appeal against surveyors' report of ships not being seaworthy.

Provided always, that in case any "passenger ship" shall be reported by any such surveyors not to be seaworthy, or not fit for her said intended voyage, the owner or charterer, if he shall think fit, may require by writing under his hand, the emigration officer, or in his absence the chief officer of customs, to appoint three other competent surveyors, of whom two at least shall be shipwrights, to survey the said ship, at the expense of the said owner or charterer; and the said officer shall thereupon appoint such surveyors, who shall survey the said ship, and if they shall, by an unanimous report under their hands (but not otherwise), declare the said ship to be seaworthy, and fit for her intended voyage, the said ship shall then, for the purposes of this Act, be deemed seaworthy for such voyage.

§ 19.

With respect to the Court of Survey instituted by the "Merchant Shipping Act, 1876," see 39 & 40 Vict. c. 80, s. 7, under s. 291 of the "Merchant Shipping Act, 1854," p. 246. As to appeals from the reports of surveyors made under this sect., see 39 & 40 Vict. c. 80, s. 14, under sect. 11 of the "Passengers Act, 1855," p. 478. Passenger ships need not now be surveyed under the Merchant Shipping Acts, and also under the Passengers Acts (see 39 & 40 Vict. c. 80, s. 18, under sect. 11 of this Act, p. 480).

Fees in respect of surveys, &c.

36 & 37 Vict. c. 85, s. 30.—There shall be paid in respect of the several measurements, inspections, and surveys mentioned in the third schedule hereto, such fees, not exceeding those specified in that behalf in the said schedule, as the Board of Trade may from time to time determine.

SCHEDULE III.

TABLE OF MAXIMUM FEES TO BE PAID FOR THE MEASUREMENT, SURVEY, AND INSPECTION OF MERCHANT SHIPS.

1. *For Measurement of Tonnage.*

	£	s.	d.
For a ship under 50 tons register tonnage	1	0	0
„ from 50 to 100 tons „	1	10	0
„ „ 100 to 200 „ „	2	0	0
„ „ 200 to 500 „ „	3	0	0
„ „ 500 to 800 „ „	4	0	0
„ „ 800 to 1,200 „ „	5	0	0
„ „ 1,200 to 2,000 „ „	6	0	0
„ „ 2,000 to 3,000 „ „	7	0	0
„ „ 3,000 to 4,000 „ „	8	0	0
„ „ 4,000 to 5,000 „ „	9	0	0
„ „ 5,000 and upwards „	10	0	0

2. *For the Inspection of the Berthing or Sleeping Accommodation of the Crew.*

	£	s.	d.
For each visit to the ship	0	10	0

Provided as follows:

1. The aggregate amount of the fees for any such inspection shall not exceed one pound (£1) whatever be the number of separate visits.
2. When the accommodation is inspected at the same time with the measurement of the tonnage, no separate fee shall be charged for such inspection.

3. *For the Survey of Emigrant Ships.*

	£	s.	d.
a. For an ordinary survey of the ship, and of her equipments, accommodation, stores, light, ventilation, sanitary arrangements, and medical stores	10	0	0

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	£	s.	d.
b. For a special survey	15	0	0
c. In respect of the medical examination of passengers and crew, for every hundred persons or fraction of a hundred persons examined	1	0	0

4. *For the Inspection of Lights and Fog Signals.*

For each visit made to a ship on the application of the owner, and for each visit made where the lights or fittings are found defective	0	10	0

Provided that the aggregate amount of fees for any such inspection shall not exceed one pound (£1) whatever be the number of separate visits.

Penalty on emigration surveyor receiving gratuity.

35 & 36 Vict. c. 73, s. 15.—If any surveyor or any person employed under the authority of the Passengers Act, 1855, demands or receives directly or indirectly, otherwise than by the direction of the Board of Trade, any fee, remuneration, or gratuity whatever in respect of any of the duties performed by him under this Act or the Acts amended hereby, he shall for every such offence incur a penalty not exceeding fifty pounds.

As to the construction of beams and decks.

20. In every "passenger ship" the beams supporting the "passenger decks" shall form part of the permanent structure of the ship: they shall be of adequate strength, in the judgment of the emigration officer at the port of clearance, and shall be firmly secured to the ship to his satisfaction. The "passenger decks" shall be at least one inch and a half in thickness, and shall be laid and firmly fastened upon the beams continuously from side to side of the compartment in which the passengers are berthed. The height between that part of any deck on which passengers are carried and the deck immediately above it shall not be less than six feet. In case of non-compliance with any of the requirements of this section, the owner, charterer, or master of the ship, or any of them, shall for each offence be liable to a penalty not exceeding 50*l.* nor less than 5*l.* sterling.

Penalty.

Arrangement and size of berths.

21. There shall not be more than two tiers of berths on any one deck in any "passenger ship," and the interval between the floor of the berths and the deck immediately beneath them shall not be less than six inches, nor the interval between each tier of berths and between the uppermost tier and the deck above it less than two feet six inches: the berths shall be securely constructed, and of dimensions not less than six feet

in length, and eighteen inches in width for each statute adult, and shall be sufficient in number for the proper accommodation of all the passengers contained in the lists of passengers herein-before required to be delivered by the master of the ship. No part of any berth shall be placed within nine inches of any water-closet erected in the between-decks. In case of noncompliance with any of the requirements of this section, the owner, charterer, or master of the ship, or any of them, shall for each offence be liable to a penalty not exceeding 50*l.* nor less than 5*l.* sterling.

Penalty.

22. In every "passenger ship" all the male passengers of the age of fourteen years and upwards who shall not occupy berths with their wives shall, to the satisfaction of the emigration officer at the port of clearance, be berthed in the fore part of the ship, in a compartment divided off from the space appropriated to the other passengers by a substantial and well-secured bulk-head, without opening into, or communication with, any adjoining passenger berth, or in separate rooms if the ship be fitted with enclosed berths: not more than one passenger, unless husband and wife, or females or children under twelve years of age, shall be placed in or occupy the same berth. In case of noncompliance with any of the requirements of this section, the owner, charterer, or master of the ship, or any of them, shall for each offence be liable to a penalty not exceeding 50*l.* nor less than 5*l.* sterling.

Single men to be berthed in a separate compartment.

As to numbers and sexes in one berth.

By Order in Council, dated 3rd of February, 1863 (see s. 59 of the Act, p. 518), provision is made for preserving order in passenger ships conveying to the colony of Victoria, in Australia, as many as ten unprotected female passengers.

1. "Unprotected female passengers" is defined to mean every female passenger between the ages of twelve and thirty-five, proceeding to the colony of Victoria, by virtue of a passenger warrant, issued by the government of that colony, who, if married, shall not be accompanied by her husband, or, if unmarried, shall not be accompanied by her father or step-father, or by a married brother with his wife, or a married sister with her husband, or by an unmarried brother over the age of twenty-five. The terms "Passengers," "Passenger Ship," and "Master," have the same meanings as in the "Passengers Act, 1855" (see Passengers Act, s. 3, p. 473).

Unprotected female passengers, defined.

2. All unprotected female passengers shall, during the voyage, be berthed in open berths, in a compartment in the aftermost part of the upper passenger deck of the ship, effectually divided off by substantial bulkheads from the other portions of such deck: and no single men, or men without their wives, shall be berthed next to the bulkhead dividing off such compartment.

How they are to be berthed.

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Children under twelve.

3. The children under twelve years of age of married female passengers, unaccompanied by their husbands, shall be berthed with their mothers.

Special entrance.

4. There shall be an entrance to such compartment from the upper deck, or poop, exclusively appropriated to the use of such female passengers.

Matron.

5. There shall be carried on board a matron, to be appointed by the owner or master of the ship, and to be charged with the maintenance of discipline among such female passengers as aforesaid.

Not to act as servants.

6. No unprotected female passenger shall on any account be allowed to act, or shall act as servant, or attendant, on the surgeon, master, or any of the officers of the ship, or on any male cabin passenger.

Not to mix with crew or passengers.

7. All intercourse between unprotected female passengers and any of the officers or crew of the ship, or between such females and any of the male passengers (except brothers or brothers-in-law, and in case of unprotected married women, their children), is hereby strictly prohibited.

Deck set apart for them.

8. The master of the ship, before sailing, shall, with the approval of the emigration officer at the port of clearance, mark out the portion of the poop or main deck to be assigned for the purpose of exercise, to such unprotected female passengers, who, during the voyage shall keep within the limits so marked out.

Must go below and be locked up before dark.

9. Before dark all such female passengers as aforesaid shall go below to their own compartment, and as soon as they are there collected, the master shall lock the entrance, and on no account shall any man enter the compartment during the night, except the surgeon in case of illness, or the officers and crew, in case danger to the ship shall render their entrance necessary.

Surgeon to attend with matron.

10. If the surgeon is required to attend professionally any of such unprotected female passengers at night, the matron shall accompany, and remain with him while he discharges his duties.

Master to assist matron.

11. The master of the ship shall afford to the matron and to the surgeon all the assistance in his power in carrying these regulations into effect.

Penalty for obstruction or insubordination.

12. Any person who shall refuse or neglect to obey any of the rules herein contained, or who shall obstruct the surgeon, or master of the ship, in the execution of any duty hereby imposed on them respectively, or who shall be guilty of insubordinate conduct, shall, on conviction, be liable for each offence to the penalties of fine and imprisonment imposed by the Passengers Act, 1855.

Application of order.

13. This Order in Council shall not apply to ships chartered by Her Majesty's Emigration Commissioners.

Berths not to be removed till passengers landed.

23. No berths in a "passenger ship" occupied by passengers during the voyage shall be taken down until forty-eight hours after the arrival of such ship at the port of final discharge, unless all the passengers shall have voluntarily quitted the ship before the expiration of that time. In case of noncompliance with any of the requirements of this section, the master of such ship shall be liable for each offence to a penalty not exceeding 50*l.* nor less than 5*l.* sterling.

Penalty.

Space to be

24. In every "passenger ship" there shall be a sufficient

space properly divided off to the satisfaction of the emigration officer at the port of clearance, to be used exclusively as a hospital or hospitals for the passengers: this space shall be under the poop, or in the round house, or in any deck house which shall be properly built and secured to the satisfaction of such emigration officer, or on the upper passenger deck, and not elsewhere, and shall in no case be less than eighteen clear superficial feet for every fifty passengers which the ship shall carry. Such hospitals shall be fitted with bed-places and supplied with proper beds, bedding, and utensils, to the satisfaction of the emigration officer at the port of clearance, and throughout the voyage kept so fitted and supplied. In case of noncompliance with any of the requirements of this section, the owner, charterer, or master of the ship shall for each offence be liable to a penalty not exceeding 50*l.* nor less than 5*l.* sterling.

allotted as an hospital.

Penalty.

25. No "passenger ship" shall clear out or proceed to sea unless fitted, to the satisfaction of the emigration officer at the port of clearance, with at least two privies, and with two additional privies on deck for every one hundred passengers on board, and in ships carrying as many as fifty female passengers, with at least two waterclosets under the poop, or elsewhere on the upper deck, to the satisfaction of such emigration officer for the exclusive use of the women and young children; all of which privies and waterclosets shall be firmly constructed and maintained in a serviceable and cleanly condition throughout the voyage, and shall not be taken down until the expiration of forty-eight hours after the arrival of the ship at the port of final discharge, unless all the passengers sooner quit the ship; provided that such privies shall be placed in equal numbers on each side of the ship, and need not in any case exceed twelve in number. In case of noncompliance with any of the requirements of this section, the master shall be liable to a penalty for each offence not exceeding 50*l.* nor less than 5*l.* sterling.

Regulation as to construction of privies.

Penalty.

26. No "passenger ship" shall clear out or proceed to sea without such provision for affording light and air to the passenger decks as the circumstances of the case may, in the judgment of the emigration officer at the port of clearance, require; nor if there are as many as one hundred passengers on board, without having an adequate and proper ventilating

As to light and ventilation.

§§ 26, 27.

apparatus, to be approved by such emigration officer and fitted to his satisfaction; the passengers shall, moreover, have the free and unimpeded use of the whole of each hatchway situated over the space appropriated to their use, and over each such hatchway there shall be erected such a boobyhatch or other substantial covering as shall, in the opinion of such emigration officer, afford the greatest amount of light and air, and of protection from wet, as the case will admit. In case of noncompliance with any of the requirements of this section, the owner, charterer, or master of the ship, or any of them, shall for each offence be liable to a penalty not exceeding 50*l.* nor less than 20*l.*

Penalty on non-compliance.

Regulations as to the carrying of boats;

27. Every "passenger ship" shall carry throughout the voyage a number of boats according to the following scale; (that is to say,)

Two boats for every ship of less than two hundred tons:

Three boats for every ship of two hundred and less than four hundred tons:

Four boats for every ship of four hundred and less than six hundred tons:

Five boats for every ship of six hundred and less than ten hundred tons:

Six boats for every ship of ten hundred and less than fifteen hundred tons:

Seven boats for every ship of fifteen hundred tons and upwards: provided that no "passenger ship" shall be required to carry a greater number of boats than are sufficient in the judgment of the emigration officer at the port of clearance to carry all the persons on board of such ship.

of life boats;

One of such boats shall in all cases be a long boat, and one shall be a properly fitted life boat, which shall be carried in such a manner as to be, in the opinion of the emigration officer, most available for immediate service: each of such boats shall be of a suitable size and description, to be approved by the emigration officer at the port of clearance, and shall be seaworthy, and properly supplied with all requisites, and kept clear, at all times, for immediate use at sea: there shall likewise be on board each "passenger ship" if proceeding to any place to the southward of the equator at least two chrono-

meters, and if to any place to the northward of the equator at least one chronometer, and on board of all "passenger ships" at least three steering and one azimuth compass, four properly fitted life buoys, kept ready at all times for immediate use, and some adequate means, to be approved by the emigration officer at the port of clearance, of making signals by night and in fogs; also a fire-engine, in proper working order, and of such description and power, and either with or without such apparatus for extinguishing fire as such officer may approve; and not less than three bower anchors of such weight, and with cables of such length, size, and material, as in the judgment of such emigration officer shall be sufficient for the size of the ship. In case of noncompliance with any of the requirements of this section, the master of the ship shall for each offence be liable to a penalty not exceeding 50*l.* nor less than 5*l.* sterling.

and of life buoys, anchors, and fire engines, &c.

Penalty.

For the boats and life-buoys required to be carried by ordinary vessels, see sect. 292 of the Merchant Shipping Act, 1854, p. 253.

Signals of Distress

39 & 40 Vict. c. 80, s. 21.—Every sea-going passenger steamer and every emigrant ship shall be provided to the satisfaction of the Board of Trade—

(1.) With means for making the signals of distress at night specified in the First Schedule to the Merchant Shipping Act, 1873 (*see p.* 257), or in any rules substituted therefor, including means of making flames on the ship which are inextinguishable in water, or such other means of making signals of distress as the Board of Trade may previously approve; and

(2.) With a proper supply of lights inextinguishable in water and fitted for attachment to life buoys.

If any steamer or ship goes to sea from any port of the United Kingdom without being so provided as required by this section, for each default in any of the above requisites the owner shall, if he appears to be in fault, incur a penalty not exceeding one hundred pounds, and the master shall, if he appears to be in fault, incur a penalty not exceeding fifty pounds.

Provision of signals of distress, inextinguishable lights, and life buoys in passenger steamers and emigrant ships.

Suggestions to Masters of Emigrant Ships respecting Boats and Fire at Sea.

Her Majesty's Colonial and Land Emigrant Commissioners having in view the fearful consequences which must result from a want of prepara-

Reasons for the suggestions.

§ 27.

tion in the event of accident to an emigrant ship, and especially of *fire*. have felt it their duty to call the special attention of the masters and officers of such ships to the precautions necessary to prevent such a calamity, and to the means of encountering it should it occur. They are of course aware that no scheme or regulations which may be formed beforehand can supply the place of coolness, judgment, and discipline at the time; nevertheless, the previous establishment of regulations, and the familiarity of the officers and crew with them, cannot but tend to obviate confusion and loss of time when danger arises. It is from the hope of contributing to this end, and not from any disposition to interfere in matters beyond their immediate duties, that the commissioners have drawn up the following suggestions.

The first matter to be settled is the arrangement of the boats.

I. *Boats.*

Life boat.

1. The life boat should always be carried in such a manner as to admit of its being rapidly and safely lowered at the shortest notice.

Boats to be hung in davits, and their gear kept in them.

2. All the boats, except the long boat, should if practicable be hung in davits. They should be kept clear of lumber, and the oars and necessary gear should be buckled or strapped to the thwarts of each, and ready for immediate use. If thole pins or crutches are used for the oars, they as well as the rudder and plug should be laniarded. Besides the common cork plug, a piece of vulcanized india rubber, about a quarter of an inch in thickness nailed on the foreside of the plughole, will be found useful as a simple and inexpensive plug or valve. It would be also desirable that a small compass, and the means of striking a light, should be kept in each boat, in a waterproof case.

Boats to be kept wetted and covered.

3. The boats should be kept constantly wetted and covered from the sun. It would be advisable to have a waterproof canvas casing laced to the gunwale, but in such manner as to admit of being easily stripped off. The lacing should from time to time be undone to prevent its getting stiff.

Life lines to boats.

4. Every boat should be fitted with life lines below the gunwale streak. To the stern and quarter boats a rope should be constantly attached from forward, to prevent them going adrift when lowered in haste. The tackles for hoisting out the boats should be kept constantly ready for use in some place well known, and easily accessible to those in charge.

Each boat to be in charge of a responsible person.

5. Each boat should be placed under the charge of an officer or steady person, who should be held responsible for its being kept constantly fit for instant service. To insure this the chief officer should periodically inspect all the boats and their gear, and report their condition to the master.

Crews to be assigned to boats.

6. It would be advisable, as soon as practicable after leaving port, to assign to each boat a certain number of the ship's company as its crew. or skeleton crew—to be completed with passengers; and when opportunities permit to exercise the men in lowering the boats at sea. The life boat's crew should be picked men.

II. *To Prevent Fire.*

Cargo to be properly stowed before sailing.

7. No passenger ship should put to sea until all her cargo is properly stowed away, and the decks cleared of any loose straw or hay, or other inflammable material used for packing or other purposes (see Rule 18 of

Order in Council, 7th January, 1864, under section 60 of this Act, p. 520).

Passengers to give up inflammable articles.

8. The passengers should be called on to deliver up whatever lucifer matches, gunpowder, or other inflammable articles they may have about them, and should be warned not only of the danger to the ship and passengers, but that they will be subject to punishment under Her Majesty's Orders in Council, for retaining such things in their possession (see Rule 17 of Order in Council, 7th January, 1864, under sect. 60 of this Act, p. 520).

Naked lights and smoking to be prohibited.

9. No naked lights should on any account be used in the hold or store rooms, nor in the between-decks, except under trustworthy superintendence; nor should any person be allowed to read in bed with a naked light. Smoking between decks should also be strictly prohibited (see Rule 10 of Order in Council, 7th January, 1864, under sect. 60 of this Act, p. 519).

Spirits not to be broached in the hold.

10. Spirits should never be opened in the hold, but should be hoisted on deck for the purpose (see sect. 62 of this Act, p. 521).

Both fire-annihilators and engines recommended.

11. It is strongly recommended that both fire-annihilators and fire-engines should be carried. These should be placed under the special charge of one of the principal officers and the carpenter, who should be responsible that, with the buckets and other fire apparatus, they are kept in a state fit for immediate use. The engine should be worked once or twice a week to keep it in proper order.

Ship's company to be divided into gangs and assigned to stations.

12. As soon as possible after leaving port, the officers and crew should be divided into parties, and assigned to stations, in case of fire, in the same manner as for the boats; possibly the same distribution may answer for both purposes.

III. *On the Occurrence of Fire.*

Primary points for master to attend to on alarm of fire.

13. Should a fire break out, the first steps, with a view to arrest its progress as much as possible, must be so to place the ship as to keep the fire to leeward, and to cut off the supply of air by closing the ports, scuttles, hatches, &c., and by smothering the fire with wet blankets, sails, &c.

Duties of gangs.

14. The parties into which the ship's company has been divided should immediately, on the ringing of the fire-bell, fall into their respective places. To one party should be assigned the working of the fire annihilators and engines; to another, the closing the ports, &c., and the preparation of wet cloths for suffocating the fire; to a third, the preparations for lowering the boats, and provisioning them. Each of these duties will require prompt and clear decision, and each should therefore be entrusted to an intelligent and responsible person; and as it might be a great assistance to an officer when the emergency arises, to have had the opportunity of considering beforehand the best way of meeting it, it would be desirable that each should from the first be informed of the duty which in such a case would be assigned to him.

Male passengers.

15. The male passengers should be required to fall into and assist the several parties as the master might direct. This would not only be a material aid, but would help to keep their minds engaged, and to promote the discipline on which the safety of all must to a great extent depend.

Females and children.

16. The females, with children and sick, should remain under the immediate charge of the surgeon, who should endeavour to keep them

§§ 27, 28. from being a hindrance to the working parties, and prepare them for immediately leaving the ship, should that step ultimately become necessary. They should secure what warm clothing they could.

No one to enter or lower the boats without orders.

17. No one should be permitted to enter the boats, except those in charge of them; nôr should any boat be lowered on any pretext whatever, unless by the express orders of the captain. On a strict observance of this rule the safety of the people in the last extremity will depend.

Raft.

18. If the boats should be insufficient to hold all the people, the master will of course take whatever measures may be in his power to construct a raft. A raft may be made of spare spars lashed together in a triangular form, and to render it more buoyant, the ends should be secured to empty water casks, whose heads should be guarded by hammocks or beds. As a precautionary preparation against such an emergency, some of the largest water casks, as soon as emptied, should be grometted round at each end with 8 inch rope, becketted and tightly bunged, and stowed away in the long boat, and daily wetted, and thus kept ready for use at a moment's notice.

Broaching spirits to be resisted forcibly.

19. Any attempt to get at the spirits or wine on board in moments of danger should be resisted by all hands at all hazards (*a*).

Accidents to steamships are to be reported to the Board of Trade (see The Merchant Shipping Act, 1854, sect. 326, p. 298). As to collisions and accidents in general, see The Merchant Shipping Act, 1854. Part IV., p. 258.

Regulations as to carrying an efficient crew.

28. Every "passenger ship" shall be manned with an efficient crew for her intended voyage, to the satisfaction of the emigration officer, from whom a clearance of such ship may be demanded, and the strength of the crew shall not be diminished, nor any of the men changed when once passed by such emigration officer, without his consent in writing, or that of the superintendent of a mercantile marine office of the port of clearance, as required by the laws then in force regulating the shipping of seamen on board merchant vessels. Where the consent of the superintendent of a mercantile marine office is obtained, it shall, within twenty-four hours thereafter, be lodged with such emigration officer. In case of noncompliance with any of the requirements of this section, the master of the ship shall for each offence be liable to a penalty not exceeding 50*l.*: provided, that if the emigration officer shall consider the crew inefficient, and the owner or charterer of the ship shall thereupon appeal in writing to the Board of Trade, such Board shall, at the expense of the appellant, appoint two other emigration officers or two competent persons to examine into the matter, and the unanimous opinion of the persons so

Penalty.

(*a*) These suggestions were issued in 1853.

appointed, expressed under their hands, shall be conclusive on the point.

§ 28, 29.

With respect to the shipping of seamen, see the "Merchant Shipping Act, 1854," sec. 146, p. 127 *et seq.*

Certain articles prohibited as cargo and ballast.

29. No "passenger ship" shall clear out or proceed to sea if there shall be on board as cargo, horses, cattle, gunpowder, vitriol, lucifer matches, guano, or green hides, nor if there shall be on board any other article or number of articles, whether as cargo or ballast, which by reason of the nature or quantity or mode of stowage thereof shall, either singly or collectively, be deemed by the emigration officer at the port of clearance likely to endanger the health or lives of the passengers or the safety of the ship: no part of the cargo, or of the passengers' luggage, or of the provisions, water, or stores, whether for the use of the passengers or of the crew, shall be carried on the upper deck or on the "passenger decks," unless in the opinion of such emigration officer it shall be so placed as not to impede light or ventilation, nor interfere with the comfort of the passengers; nor unless the same be stowed and secured to the satisfaction of such emigration officer, and the space occupied thereby, or rendered, in the opinion of such officer, unavailable for the accommodation of the passengers shall (unless occupied by passengers' luggage) be deducted in calculating the space by which, under the provisions of this Act, the number of passengers is regulated. In case of non-compliance with any of the requirements of this section, the owner, charterer, or master, or any of them, shall for each offence be liable to a penalty not exceeding 300*l.* nor less than 5*l.* sterling.

Stowage of cargo, stores, and luggage to be approved by emigration officer.

Penalty.

See under sect. 329 of The Merchant Shipping Act, 1854, p. 298, *et seq.*, as to the carriage of dangerous goods in all vessels.

Horses and cattle may be carried in passenger ships, under conditions herein named.

26 & 27 Vict. c. 51, s. 8.—Notwithstanding the prohibition contained in the twenty-ninth section of the said "Passengers' Act, 1855," horses and cattle may be carried as cargo in passenger ships, subject to the following conditions:

(1.) That the animals be not carried on any deck below the deck on which passengers are berthed, nor in any compartment in which passengers are berthed, nor in any adjoining compartment, except in a ship built of iron, and of which the compartments are divided off by water-tight bulkheads extending to the upper deck:

§§ 29, 30.

(2.) That clear space on the spar or weather deck be left for the use and exercise of the passengers, at the rate of at least ten superficial feet for each statute adult:

Space to be left clear for passengers.

(3.) That no greater number of passengers be carried than in the proportion of fifteen to every one hundred tons of the ship's registered tonnage:

Number of passengers.

(4.) That in passenger ships of less than five hundred tons registered tonnage not more than two head of large cattle be carried, nor in passenger ships of larger tonnage more than one additional head of such cattle for every additional two hundred tons of the ship's registered tonnage, nor more in all in any passenger ship than ten head of such cattle: The term "large cattle" shall include both sexes of horned cattle, deer, horses, and asses; four sheep of either sex, or four female goats, shall be equivalent to, and may, subject to the same conditions, be carried in lieu of one head of large cattle:

Definition of the term "large cattle."

Arrangements for housing cattle.

(5.) That proper arrangements be made, to the satisfaction of the emigration officer at the port of clearance, for the housing, maintenance, and cleanliness of the animals and for the stowage of their fodder:

Dogs and pigs.

(6.) Not more than six dogs, and no pigs or male goats, shall be conveyed as cargo in any passenger ship: For any breach of this prohibition, or of any of the above conditions, the owner, charterer, and master of the ship, or any of them, shall be liable for each offence to a penalty not exceeding three hundred pounds nor less than five pounds.

Authority by Secretary of State to carry naval and military stores in passenger ships.

33 & 34 Vict. c. 95, s. 3.—Any one of Her Majesty's Principal Secretaries of State may, by order under his hand, authorise the carriage as cargo in any passenger ship (subject to such conditions and directions as may be specified in the order) of naval and military stores for the public service, and such stores may, notwithstanding anything contained in the principal Act, be carried accordingly in such passenger ship.

Such order shall be addressed to the emigration officer or person performing the duties of emigration officer at the port of clearance, and shall be by him countersigned, and delivered to the master of the passenger ship to which it refers, and shall be delivered up by the master to the chief officer of customs at the port where the stores are discharged.

In case of non-compliance.

The master shall comply with all the conditions and directions specified in the order, and non-compliance therewith shall be deemed non-compliance with the requirements of the said section twenty-nine of the principal Act.

Computation of voyages.

30. For the purposes of this Act, the length of the voyage for a "passenger ship" proceeding from the United Kingdom

to the undermentioned places respectively shall be determined by the following scale; (that is to say,) §§ 30, 31.

	If the Ship be propelled by Sails alone, or by Steam Power not sufficient, without the aid of Sails, to propel the Ship after the rate of Five Statute Miles an Hour.	If the Ship be propelled either wholly or in aid of Sails by Steam Engines of not less Power than sufficient, without the aid of Sails, to propel the Ship after the rate of Five Statute Miles an Hour.
	Days.	Days.
To North America (except the West Coast thereof:—		
For ships clearing out between the sixteenth day of January and the fourteenth day of October, both days inclusive	70	40
For ships clearing out between the fifteenth day of October and the seventeenth day of January, both days inclusive	80	45
To the West Indies, and any part of the East Coast of Central or South America, north of the equator	70	40
To any part of the East Coast of South America lying between the equator and the twenty-fifth degree of south latitude	84	50
To the West Coast of Africa north of the equator	84	50
To the Coast of Africa south of the equator, or to the Falkland Islands, or to any part of the East Coast of South America southward of the twenty-fifth degree of south latitude	105	65
To the Mauritius, and to the Western Coast of America south of the equator	126	75
To Ceylon	140	85
To Western Australia	120	85
To any other of the Australian Colonies	140	90
To New Zealand and to the Western Coast of America between the equator and the fortieth degree of north latitude	150	90
To the Western Coast of America north of the fortieth degree of north latitude, and the islands adjacent thereto	182	96

For the like purposes, the Board of Trade, from time to time, by any notice in writing, and published in the *London Gazette*, may nevertheless declare what shall be deemed to be the length of voyage from the United Kingdom to any of the said hereinbefore mentioned places, or to any other port or place whatsoever, and may fix such different lengths of voyage as they may think reasonable for such different descriptions of vessels as aforesaid.

31. Before any "passenger ship" shall be cleared out the emigration officer at the port of clearance shall survey or

Before clearance provisions and

§§ 31-33.

cause to be surveyed by some competent person the provisions and water by this Act required to be placed on board for the consumption of the passengers, and shall satisfy himself that the same are of a good and wholesome quality, and in a sweet and good condition, and are in quantities sufficient to secure throughout the voyage the issues hereinafter prescribed: in addition to the allowance of pure water for the use of each passenger there shall be shipped for cooking purposes an additional supply of pure water after the rate of at least ten gallons for every day of the prescribed length of voyage for every one hundred statute adults on board; and also for the use of the crew and all other persons on board an ample supply of wholesome provisions and pure water, which shall not be inferior in quality to the supply of the same articles provided for the consumption of the passengers: all such water, provisions, and stores shall be provided and properly stowed away in accordance with the requirements of the twenty-ninth section of this Act, by and at the expense of the owner, charterer, or master of the ship; and if a clearance be obtained for any "passenger ship" which shall not be then stored with the requisite quantities of such water, provisions, and stores as are required by this Act, the owner, charterer, or master of such ship, or any of them, shall for each offence be liable to a penalty not exceeding 300*l.* sterling.

water to be surveyed.

Provisions for the crew not to be inferior to those for the passengers.

Penalty.

Power to emigration officer to reject and mark bad provisions.

Penalty for re-shipping.

32. If such emigration officer shall consider that any of the provisions or stores or water are not of a good and wholesome quality, or not in a sweet and good condition, it shall be lawful for him to reject and mark the same, or the packages or vessels in which they are contained, and to direct the same to be landed or emptied; and if such rejected provisions or stores or water shall not thereupon be forthwith landed or emptied, or if, after being landed, the same or any part thereof shall be reshipped in such ship, the owner, charterer, or master thereof, or any of them, or if reshipped in any other "passenger ship," the person causing the same to be reshipped shall for each offence be liable to a penalty not exceeding 100*l.* sterling.

Water tanks or casks to be approved by emigration officer.

33. In every "passenger ship" the water to be laden on board, as hereinbefore required, shall be carried in tanks or in casks to be approved of by the emigration officer at the port of clearance. When casks are used, they shall be sweet and

tight, of sufficient strength, and if of wood properly charred inside, and shall not be capable severally of containing more than three hundred gallons each: the staves of the water casks shall not be made of fir, pine, or soft wood. In case of non-compliance with any of the requirements of this section, the owner, charterer, or master of such ship, or any of them, shall for each offence be liable to a penalty not exceeding 50*l.*

Provision for touching at intermediate ports to fill up water.

34. If any "passenger ship" shall be intended to call at any intermediate port or place during the voyage, for the purpose of taking in water, and if an engagement to that effect shall be inserted in the bond mentioned in the sixty-third section of this Act, then it shall be sufficient to place on board at the port of clearance such supply of water as may be requisite, according to the rate hereinafter mentioned, for the voyage of the said ship to such intermediate port or place, subject to the following conditions; (that is to say),

(1.) That the emigration officer signify his approval in writing of the arrangement, to be carried amongst the papers of the ship, and exhibited to the chief officer of customs, or to Her Majesty's consular officer, as the case may be, at such intermediate port or place, and to be delivered to the chief officer of customs, or to Her Majesty's consular officer, as the case may be, on the arrival of the said ship at the final port or place of discharge:

(2.) That if the length of either portion of the voyage, whether to such intermediate port or place, or from such intermediate port or place to the final port or place of discharge, be not prescribed in or under the provisions of this Act, the emigration officer at the port of clearance shall in every such case declare the same in writing to be carried amongst the papers of the ship:

(3.) That the ship shall have on board at the time a clearance is demanded tanks or water casks, of the description hereinbefore mentioned, sufficient for stowing the quantity of water required for the longest of such portions of the voyage as aforesaid.

Dietary scales of provisions.

35. The master of every "passenger ship" shall, during the voyage, including the time of detention at any place before

§ 35. the termination thereof, issue to each passenger, or, where the passengers are divided into messes, to the head man for the time being of each mess on behalf and for the use of all the members thereof, an allowance of pure water and sweet and wholesome provisions, of good quality, according to the following dietary scale; (that is to say,) if the length of the voyage, computed as hereinbefore mentioned, shall not exceed eighty-four days for ships propelled by sails only, or fifty days for ships propelled by steam, or steam in aid of sails, then according to the dietary scale marked "A.;" but if the length of the voyage, computed as aforesaid, shall exceed eighty-four days for ships propelled by sails only, or fifty days for ships propelled by steam, or steam in aid of sails, then according to the dietary scale marked "B."

WATER.

Three quarts of water daily to each statute adult, exclusive of the quantity hereinbefore specified as necessary for cooking the articles hereinafter required to be issued in a cooked state.

PROVISIONS.

Weekly, per statute adult:—

	Scale A. For Voyages not exceeding 84 Days for Sailing Vessels, or 50 Days for Steamers.	Scale B. For Voyages exceeding 84 Days for Sailing Vessels, or 50 Days for Steamers.
	lbs. oz.	lbs. oz.
Bread or biscuit, not inferior in quality to navy biscuit	3 8	3 8
Wheaten flour	1 0	2 0
Oatmeal	1 8	1 0
Rice	1 8	0 8
Peas	1 8	1 8
Potatoes	2 0	2 0
Beef	1 4	1 4
Pork	1 0	1 0
Tea	0 2	0 2
Sugar	1 0	1 0
Salt	0 2	0 2
Mustard	0 0½	0 0½
Black or white pepper, ground	0 0½	0 0½
Vinegar	One gill.	One gill.
Lime juice	. . .	0 6
Preserved meat	. . .	1 0
Suet	. . .	0 6
Raisins	. . .	0 8
Butter	. . .	0 4

§ 35.

SUBSTITUTIONS.

Substitutions at the following rates may, at the option of the master of any "passenger ship," be made in the above dietary scales, that is to say :—

1 lb. of preserved meat . . .	for	1 lb. of salt pork or beef.
1 lb. of flour or of bread or biscuit, or ¼ lb. of beef or of pork . .	for	1¼ lb. of oatmeal or 1 lb. of rice or 1 lb. of peas.
1 lb. of rice	for	1¼ lb. of oatmeal, or *vice versâ*.
¼ lb. of preserved potatoes . .	for	1 lb. of potatoes.
10 oz. of currants	for	8 oz. of raisins.
3½ oz. of cocoa or of coffee, roasted and ground	for	2 oz. of tea.
¾ lb. of treacle	for	½ lb. of sugar.
1 gill of mixed pickles . . .	for	1 gill of vinegar.

Penalty on non-compliance.

Provided that the substituted articles be set forth in the contract tickets of the passengers. In case of non-compliance with any of the requirements of this section, the master of the ship shall be liable for each offence to a penalty not exceeding 50*l.* sterling.

Issue of lime-juice confined to the Tropics.

26 & 27 Vict. c. 51, s. 9.—The requirements of the thirty-fifth section of the said "Passengers Act, 1855," that six ounces of lime juice should be issued weekly to each statute adult on voyages exceeding eighty-four days in duration for sailing vessels, or fifty days for steamers, shall be confined to the period when the ship shall be within the Tropics; during the other portions of the voyage the issue of lime juice shall be at the discretion of the medical practitioner on board; or, if there be no such practitioner on board, at the discretion of the master of the ship.

Substitution of soft bread for other bread stuffs.

26 & 27 Vict. c. 51, s. 10.—In addition to the substitutions in the dietary scales specified in the thirty-fifth section of the said "Passengers Act, 1855," soft bread baked on board may be issued, at the option of the master of any passenger ship, in lieu of the following articles, and in the following proportions; (that is to say,) one pound and a quarter of a pound of such soft bread may be issued in lieu of one pound of flour, or of one pound of biscuit, or of one pound and a quarter of a pound of oatmeal, or of one pound of rice, or of one pound of peas.

For the rules concerning lime juice and other anti-scorbutics to be observed by ships in certain cases of navigating to any place out of the United Kingdom, see The Merchant Shipping Act, 1854, sect. 224, p. 197.

By Order in Council, dated 28th June, 1875, and made pursuant to the powers given by sect. 59 of this Act (see p. 516), two previous Orders relating to water tanks and distilling apparatus were revoked, and the following substituted.

§§ 35, 36.

Now, therefore, Her Majesty doth by and with the advice of Her Privy Council, and in pursuance and in exercise of the authority vested in Her by the said "Passengers' Act, 1855," hereby revoke the said Order in Council of the sixth day of May, one thousand eight hundred and fifty-seven, and the said Order in Council of the fifth day of December, one thousand eight hundred and sixty-five, except in so far as the latter repeals a certain Order in Council of the ninth day of January, one thousand eight hundred and sixty-three, and doth hereby order as follows:—

Passenger ship may clear out with half statutory amount of water, on certain conditions.

Any passenger ship, whether propelled by steam engines or by sails only, or by sails and steam engines, may be cleared out and proceed on her voyage, having on board in tanks or casks only half of the quantity of pure water required by the said Act to be carried for the use of the passengers, provided that the following rules and regulations be observed, that is to say,

Distilling apparatus.

1. That there be on board such ship an efficient apparatus for distilling fresh water from salt water of such a description as the Board of Trade may from time to time approve.

Certificate of its efficiency.

2. That the owners, charterers, or master of such ship, before clearance, lodge with the emigration officer at the port of clearance, a certificate from one of the Engineer Surveyors appointed by the Board of Trade, declaring that the apparatus is in good working condition, and that within seven days immediately preceding the date of such certificate the same had been examined by him, and stating the number of imperial gallons of pure fresh water which it is capable of producing in every twenty-four hours, and further declaring that the apparatus on board is such as has been approved by the Board of Trade as aforesaid.

Must produce sufficient water.

3. That in every case such emigration officer shall be satisfied that the number of gallons of pure water which the apparatus is so certified to be capable of producing in every twenty-four hours, is a number of gallons equal to the whole number of persons about to proceed on the intended voyage of such ship, that is to say, one gallon per head for the whole number of cabin passengers, passengers, and crew.

Competent manager of apparatus.

4. That there is rated on the ship's articles, and that there is on board the ship, some person or persons who, to the satisfaction of the said emigration officer, shall be competent for the proper management and repair of such distilling apparatus; and to prevent all doubts on the construction of this Order in Council, it is hereby further ordered that the terms "Emigration Officer," "Statute Adult," "Master," and "Passenger Ship," shall herein have the same significations as are assigned to them in the said "Passengers Act, 1855," and "The Passengers Act Amendment Act, 1863," respectively, and the term "Board of Trade" shall herein have the meaning assigned to it by "The Merchant Shipping Act, 1854."

Size of mess.

36. The messes into which the passengers in any passenger ship may be divided shall not consist of more than ten statute adults in each mess, and members of the same family, whereof one at least is a male adult, shall be allowed to form a separate mess.

Provisions to be issued

The provisions according to the above scale shall be issued, such of them as require to be cooked, in a properly

cooked state, daily before two o'clock in the afternoon, to the head person for the time being of each mess on behalf and for the use of the members thereof. The first of such issues shall be made before two o'clock in the afternoon of the day of embarkation to or for such passengers as shall be then on board. In case of non-compliance with any of the requirements of this section, the master of the ship shall for each offence be liable to a penalty not exceeding 50*l.*

daily, and articles which require cooking to be cooked.

37. The Board of Trade may from time to time, by any notice for that purpose, and published in the *London Gazette*, authorise the issue of provisions in any "passenger ship" according to such other dietary scale (besides that hereinbefore prescribed) as shall in their opinion contain in the whole an equivalent amount of wholesome nutriment; and after the publication of such notice it shall be lawful for the master of any "passenger ship" to issue provisions to his passengers either according to the scale by this Act prescribed, or according to the scale authorised by the said Board, whichever may have been set forth in the contract tickets of the passengers: Provided always that the said Board, by such notice as aforesaid, may revoke or alter any such dietary scale authorised by them as occasion may require.

Power to Board of Trade to authorise an alternative dietary scale.

Power to Board to alter dietary scale.

Some superfluous words of this section are repealed by the Statute Law Revision Act, 1875, and have been omitted.

39 & 40 Vict. c. 80, s. 20.—It shall be lawful for the Board of Trade, if satisfied that the food, space, accommodation, or any other particular or thing provided in an emigrant ship for any class of passengers is superior to the food, space, accommodation, or other particular or thing required by the Passengers Act, 1855, and the Acts amending the same, to exempt such ship from any of the requirements of those Acts with respect to food, space, accommodation, or other particular or thing, in such manner and upon such condltions as the Board of Trade may think fit.

Power to modify Passenger Acts as to food, space, and accommodation in emigrant ships.

38. Every "passenger ship" carrying as many as one hundred passengers shall have on board a seafaring person, who shall be rated in the ship's articles as passengers' steward, and who shall be approved by the emigration officer at the port of clearance, and who shall be employed in messing and serving out the provisions to the passengers, and in assisting

As to passengers' stewards.

§§ 38-41.

to maintain cleanliness, order, and good discipline among the passengers, and who shall not assist in any way in navigating or working the ship. In case of non-compliance with any of the requirements of this section, the master of the ship shall for each offence be liable to a penalty not exceeding 50*l.* nor less than 5*l.* sterling.

Penalty on non-compliance.

As to passenger cooks and cooking apparatus.

39. Every "passenger ship" carrying as many as one hundred passengers shall also have on board a seafaring man, or if carrying more than three hundred "statute adults," two seafaring men, to be rated and approved as in the case of passengers' stewards, who shall be employed in cooking the food of the passengers: a convenient place for cooking shall also be set apart on deck; and a sufficient cooking apparatus, properly covered in and arranged, shall be provided to the satisfaction of the said emigration officer, together with a proper supply of fuel, adequate, in his opinion, for the intended voyage. In case of non-compliance with any of the requirements of this section, the master of the ship shall for each offence be liable to a penalty not exceeding 50*l.* nor less than 5*l.* sterling.

Penalty on non-compliance.

In what cases interpreters to be carried.

40. In every foreign "passenger ship" in which as many as one half of the passengers shall be British subjects, unless the masters and officers or not less than three of them shall understand and speak intelligibly the English language, there shall be carried, where the number of passengers does not exceed two hundred and fifty, one person, and where it exceeds two hundred and fifty, two persons, who understand and speak intelligibly the language spoken by the master and crew and also the English language, and such persons shall act as interpreters, and be employed exclusively in attendance on the passengers, and not in the working of the ship; and no such ship shall clear out or proceed to sea without having such interpreter or interpreters on board; and the master of any such foreign ship clearing out or proceeding to sea without having such interpreter or interpreters on board as aforesaid shall for each offence be liable to a penalty not exceeding 50*l.* nor less than 5*l.* sterling.

Penalty.

In what cases a medical man must be carried.

41. Every "passenger ship" shall in the following cases carry a duly qualified medical practitioner, who shall be rated on the ship's articles:

(1.) When the duration of the intended voyage, as hereinbefore computed, exceeds eighty days in the case of ships propelled by sails, and forty-five days in the case of ships propelled by steam, and the number of passengers on board exceeds fifty:

(2.) Whenever the number of persons on board (including cabin passengers, officers, and crew,) exceeds three hundred:

In case of non-compliance with any of the requirements of this section, the master shall for each offence be liable to a penalty not exceeding 100*l.* nor less than 20*l.* sterling. Penalty.

Medical men are to be carried by all foreign going ships in certain cases (see The Merchant Shipping Act, 1854, sect. 230, p. 204).

By Order in Council, dated 9th August, 1866, every passenger ship carrying more than fifty passengers on any voyage to which this Act extends (see sect. 4, p. 474), shall, whatever be the duration of the voyage, and subject to the provisions of sect. 42, carry a duly qualified medical practitioner, who shall be rated on the ship's articles.

42. No medical practitioner shall be considered to be duly qualified for the purposes of this Act unless authorised by law to practise in some part of Her Majesty's dominions, or, in the case of a foreign ship, in the country to which such ship may belong, as a physician, surgeon, or apothecary, nor unless his name shall have been notified to the emigration officer at the port of clearance, and shall not be objected to by him, nor unless he shall be provided with proper surgical instruments to the satisfaction of such officer: Provided, nevertheless, that where the majority of the passengers in any "passenger ship," or as many as three hundred, are foreigners, any medical practitioner who may be approved by such emigration officer may be carried therein. In case any person shall proceed or attempt to proceed as medical practitioner in any "passenger ship" without being duly qualified as aforesaid, or contrary to any of the requirements of this section, such person and all persons aiding or abetting therein shall for each offence be liable to a penalty not exceeding 100*l.* nor less than 10*l.* sterling. Qualification of medical man. Penalty.

By an order of the Board of Trade, dated February, 1874, surgeons of passenger ships are required to sign both copies of the articles, as an additional precaution against unqualified persons obtaining medical charge of emigrants. The emigration officers at the outports are requested to see that the persons presenting themselves for such medical Medical men to sign both copies of the articles.

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appointments are duly qualified according to the requirements of this section, and in the case of British practitioners, that their names appear in the Medical Register, or that they are possessed of a certificate showing that they have been registered in accordance with the Medical Act, 1858. If necessary the medical inspector of the port should be requested to state his opinion of the applicant's fitness for the duties he seeks to discharge.

Medicines and medical comforts.

43. The owner or charterer of every "passenger ship" shall provide for the use of the passengers a supply of medicines, medical comforts, instruments, and other things proper and necessary for diseases and accidents incident to sea voyages, and for the medical treatment of the passengers during the voyage, including an adequate supply of disinfecting fluid or agent, together with printed or written directions for the use of the same respectively; and such medicines, medical comforts, instruments, and other things shall, in the judgment of the emigration officer at the port of clearance, be good in quality, and sufficient in quantity, for the probable exigencies of the intended voyage, and shall be properly packed and placed under the charge of the medical practitioner, when there is one on board, to be used at his discretion. In case of non-compliance with any of the requirements of this section, the master of the ship shall for each offence be liable to a penalty not exceeding 50*l.* nor less than 5*l.* sterling.

Penalty.

Medical inspection of passengers and medicines, &c.

44. No "passenger ship," except as hereinafter provided, shall clear out or proceed to sea until some medical practitioner, to be appointed by the emigration officer at the port of clearance, shall have inspected such medicines, medical comforts, and other articles as are required to be supplied by the last preceding section, and also all the passengers and crew about to proceed in the ship, and shall have certified to the said emigration officer that the said ship contains a sufficient supply of medicines, medical comforts, disinfecting fluid or agent, instruments, and other things requisite for the medical treatment of the passengers during the intended voyage, nor until such medical practitioner shall have certified, and the said emigration officer shall be satisfied that none of the passengers or crew appear, by reason of any bodily or mental disease, unfit to proceed, or likely to endanger the health or safety of the other persons about to proceed in such vessel. Such medical inspection of the passengers shall take place

either on board the vessel, or, at the discretion of the said emigration officer, at such convenient place on shore before embarkation as he may appoint; and the master, owner, or charterer of the ship shall pay to such emigration officer a sum at the rate of twenty shillings for every hundred persons so examined: Provided also, that in case the emigration officer on any particular occasion shall be unable to obtain the attendance of a medical practitioner, it shall be lawful for the master of any such ship to clear out and proceed to sea, on receiving from the said emigration officer written permission for the purpose. In case any "passenger ship" shall clear out or proceed to sea without having complied with all the requirements of this section, the master of such ship shall for each offence be liable to a penalty not exceeding 100*l.* nor less than 5*l.* sterling.

Proviso where no medical inspection can be obtained.

Penalty.

For the enactments respecting the medical inspection of seamen, see the "Merchant Shipping Act, 1854," s. 228, p. 203.

45. If the emigration officer at any port shall be satisfied that any person on board or about to proceed in any "passenger ship" is by reason of sickness unfit to proceed, or is for that or for any other reason likely to endanger the health or safety of the other persons on board, the said emigration officer shall prohibit the embarkation of such person, or if embarked shall require him to be relanded; and if such emigration officer shall be satisfied that it is necessary, for the purification of the ship or otherwise, that all or any of the passengers or persons on board should be relanded, the said emigration officer may require the master of the ship to reland all such passengers or persons, and the master shall thereupon reland such passengers or persons, with so much of their effects and with such members of their families as cannot in the judgment of such emigration officer be properly separated from them; and in case of non-compliance with any of the requirements of this section, the master, owner, or charterer of the ship shall for each offence be liable to a penalty not exceeding 200*l.* nor less than 10*l.*; and any passenger or person embarking after such prohibition, or refusing or neglecting to leave the ship when so directed to be relanded, shall be liable to be summarily removed, and to a penalty not exceeding forty

Re-landing of passengers on account of sickness or for purifying ships.

Penalty.

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shillings for each day which he shall remain on board after the giving of such prohibition or direction.

Passengers' Rights.

As to return of passage-money to passengers relanded on account of sickness, &c.

46. Any passenger so relanded on account of the sickness of himself or of any member of his family who may not be re-embarked and finally sail in such ship, or any emigration officer on his behalf, shall be entitled to recover, by summary process, the whole of the moneys which may have been paid by or on account of such passenger for his passage, and that of the members of his family so relanded, from the party to whom the same may have been paid, or from the owner, charterer, or master of such ship, or any of them, at the option of such passenger or emigration officer.

Section 46 of recited Act to apply to cabin passengers, and passage-money made recoverable immediately on re-landing.

26 & 27 Vict. c. 51, s. 11.—The forty-sixth section of the said "Passengers Act, 1855," shall be applicable to cabin as well as to other passengers landed on account of sickness; and the passage money of all cabin or other passengers so landed may be recovered in the manner pointed out in the said Act, upon the delivery up of their contract tickets, and notwithstanding that the ship may not have sailed: Provided always, that in the case of cabin passengers so landed one half only of their passage money shall be recoverable.

Subsistence money to be paid to passengers relanded.

47. The master of any "passenger ship," from which the whole or any part of the passengers shall be relanded on account of any of the reasons mentioned in section 45, shall pay to each passenger so relanded (or if he shall be lodged and maintained in any hulk or establishment under the superintendence of the Board of Trade, then to the emigration officer at the port,) subsistence money at the rate of one shilling and sixpence a day for each statute adult until he shall be re-embarked or decline or neglect to proceed, or until his passage money, if recoverable under the forty-sixth section of this Act, be returned to him.

Return of passage money and compensation to passengers where passages not provided for them according to contract.

48. If any person by whom or on whose behalf any contract shall have been made for a passage in any ship proceeding on any voyage to which this Act extends, shall be at the place of embarkation before six o'clock in the afternoon of the day of embarkation appointed in such contract, and shall, if required, pay the stipulated passage money, or the unpaid balance

thereof, and if from any cause whatever, other than his own refusal, neglect, or default, or the prohibition of an emigration officer, as hereinbefore mentioned, or the requirements of any Order in Council, such passenger shall not be received on board before that hour, or if from any such cause as aforesaid any passenger who shall have been received on board shall not either obtain a passage in such ship to the port at which he may have contracted to land, or, together with all the immediate members of his family who may be included in such contract, obtain a passage to the same port in some other equally eligible ship, to sail within ten days from the expiration of the said day of embarkation, and in the meantime be paid subsistence money from the time and at the rate hereinafter mentioned, such passenger, or any emigration officer on his behalf, shall be entitled to recover either from the party to whom or on whose account the same may have been paid, or (in case such contract shall have been made with the owner, charterer, or master of such ship, or with any person acting on behalf or by the authority of any of them respectively,) from such owner, charterer, or master of such ship, or any of them, at the option of such passenger or emigration officer, all moneys which shall have been paid by or on account of such passengers for such passage, and also such further sum, not exceeding 10*l.* in respect of each such passage, as shall, in the opinion of the justices of the peace who shall adjudicate on the complaint, be a reasonable compensation for the loss or inconvenience occasioned to such passenger by the loss of such passage.

Subsistence in case of detention.

49. If any ship, whether a "passenger ship" or otherwise, shall not actually put to sea, and proceed on her intended voyage before three o'clock in the afternoon of the day next after the said day of embarkation, the owner, charterer, or master of such ship, or his or their agent, or any of them, at the option of such passenger or emigration officer, shall pay to every passenger entitled to a passage (or if such passenger shall be lodged and maintained in any establishment under the superintendence of the Board of Trade, then to the emigration officer at the port of embarkation,) subsistence money after the rate of one shilling and sixpence for each statute adult in respect of each day of delay for the first ten days, and afterwards three shillings a day for each statute adult, until the

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final departure of such ship on such voyage, and the same may be recovered in manner hereinafter mentioned; provided that if the passengers be maintained on board in the same manner as if the voyage had commenced, no such subsistence money shall be payable for the first two days next after the said day of embarkation, nor if they shall be maintained shall such subsistence money be payable if the ship be unavoidably detained by wind or weather, or by any cause not attributable in the opinion of the emigration officer to the act or default of the owner, charterer, or master.

Ships putting back to replenish provisions, &c.

50. If any "passenger ship" shall, after clearance, be detained in port for more than seven days, or shall put into or touch at any port or place in the United Kingdom, she shall not put to sea again until there shall have been laden on board, at the expense of the owner, charterer, or master of such ship, such further supply of pure water, wholesome provisions of the requisite kinds and qualities, and medical comforts and stores, as may be necessary to make up the full quantities of those articles hereinbefore required to be laden on board for the intended voyage, nor until any damage she may have sustained shall be effectually repaired, nor until the master of the said ship shall have obtained from the emigration officer or his assistant, or, where there is no such officer, or in his absence, from the officer of customs at such port or place, a certificate to the same effect as the certificate hereinbefore required to enable the ship to be cleared out; and in case of any default herein the said master shall be liable, on conviction as hereinafter mentioned, to a penalty not exceeding 100*l.* nor less than 50*l.* sterling; and if the master of any "passenger ship" so putting into or touching at any port or place as aforesaid shall not within twelve hours thereafter report in writing, his arrival, and the cause of his putting back, and the condition of his ship, and of her stores and provisions, to the emigration officer, or, as the case may be, to the officer of customs at the port, and shall not produce to such officer the official or "master's list" of passengers, such master shall for each offence be liable to a penalty not exceeding 20*l.* nor less than 2*l.* sterling.

Penalty on master for default.

Ships putting back to be reported to emigration officer.

Penalty on master for neglect.

See sect. 11 of this Act, p. 477, as to this certificate, and as to appeals to the Court of Survey in case of its refusal.

51. *Repealed by* 26 & 27 Vict. c. 51, s. 12.

§ 51.

In case of wreck or damage in or near United Kingdom, passengers to be provided with a passage by some other vessel, and maintained in the meantime.

26 & 27 Vict. c. 51, s. 14.—If any passenger ship shall be wrecked, or otherwise rendered unfit to proceed on her intended voyage, while in any port of the United Kingdom, or after the commencement of the voyage, and if the passengers, or any of them, shall be brought back to the United Kingdom, or if any passenger ship shall put into any port or place in the United Kingdom in a damaged state, the master, charterer, or owner shall, within forty-eight hours thereafter, give to the nearest emigration officer, or in the absence of such officer to the chief officer of customs, a written undertaking to the following effect; that is to say, if the ship shall have been wrecked, or rendered unfit as aforesaid to proceed on her voyage, that the owner, charterer, or master thereof shall embark and convey the passengers in some other eligible ship, to sail within six weeks from the date thereof, to the port or place for which their passages respectively had been previously taken; and if the ship shall have put into port in a damaged state, then that she shall be made seaworthy and fit in all respects for her intended voyage, and shall, within six weeks from the date of such undertaking, sail again with her passengers; in either of the above cases the owner, charterer, or master shall, until the passengers proceed on their voyage, either lodge and maintain them on board in the same manner as if they were at sea, or pay to them subsistence money after the rate of one shilling and sixpence a day for each statute adult, unless the passenger shall be maintained in any hulk or establishment under the superintendence of the Board of Trade, mentioned in the said Passengers Act, 1855, in which case the subsistence money shall be paid to the emigration officer at such port or place. If the substituted ship or damaged ship, as the case may be, shall not sail within the time prescribed as aforesaid, or if default shall be made in any of the requirements of this section, such passengers respectively, or any emigration officer on their behalf, shall be entitled to recover, by summary process, as in the said Passengers Act, 1855, s. 46, is mentioned, all moneys which shall have been paid by or on account of such passengers, or any of them for such passage, from the party to whom or on whose account the same may have been paid, or from the owner, charterer, or master of such ship, or any of them, at the option of such passenger or emigration officer; provided that the said emigration officer may, if he shall think it necessary, direct that the passengers shall be removed from such damaged "passenger ship" at the expense of the master thereof; and if after such direction any passenger shall refuse to leave such ship, he shall be liable to a penalty not exceeding forty shillings, or to imprisonment not exceeding one calendar month.

Power to remove passengers from damaged ship; penalty on passengers refusing to leave.

§§ 52-54.

Secretary of State, &c. may pay expenses of taking off passengers at sea.

52. If the passengers or cabin passengers of any "passenger ship" shall be taken off from any such "passenger ship" or shall be picked up at sea from any boat, raft, or otherwise, it shall be lawful, if the port or place to which they shall be conveyed shall be in the United Kingdom, for one of Her Majesty's principal secretaries of state, or if in any of Her Majesty's colonial possessions, for the governor of such colony, or for any person authorised by him for the purpose, or if in any foreign country, for Her Majesty's consular officer, at such port or place therein, to defray all or any part of the expenses thereby incurred.

53. *Repealed by* 26 & 27 Vict. c. 51, s. 12.

Governors or consuls may send on passengers if the master of the ship fail to do so.

26 & 27 Vict. c. 51, s. 15.—If any passenger or cabin passenger of any "passenger ship" shall, without any neglect or default of his own, find himself within any colonial or foreign port, or place other than that for which the ship was originally bound, or at which he, or the Board of Trade, or any public officer or other person on his behalf, may have contracted that he should land, it shall be lawful for the governor of such colony, or for any person authorised by him for such purpose, or for Her Majesty's consular officer, at such foreign port or place, as the case may be, to forward such passenger to his intended destination, unless the master of such ship shall, within forty-eight hours of the arrival of such passenger, give to the governor or consular officer, as the case may be, a written undertaking, to forward or carry on within six weeks thereafter, such passenger or cabin passenger to his original destination, and unless such master shall accordingly forward or carry him on within that period.

54. *Repealed by* 26 & 27 Vict. c. 51, s. 12.

Expenses incurred under the two preceding sections to be a debt due to the Crown.

26 & 27 Vict. c. 51, s. 16.—All expenses incurred under the last preceding section or under the fifty-second section of "The Passengers Act, 1855," or either of them, by or by the authority of such Secretary of State, governor, or consular officer, or other person, as therein respectively mentioned, including the cost of maintaining the passengers until forwarded to their destination, and of all necessary bedding, provisions, and stores, shall become a debt to Her Majesty and her successors from the owner, charterer, and master of such ship, and shall be recoverable from them, or from any one or more of them, at the suit and for the use of Her Majesty, in like manner as in the case of other Crown debts; and a certificate in the form in Schedule (A.) hereto annexed, or as near thereto as the circumstances of the case will admit, purporting

§ 54.

to be under the hand of any such Secretary of State, governor, or consular officer (as the case may be) stating the total amount of such expenses, shall in any suit or other proceeding for the recovery of such debt be received in evidence without proof of the handwriting or of the official character of such Secretary of State, governor, or consular officer, and shall be deemed sufficient evidence of the amount of such expenses, and that the same were duly incurred, nor shall it be necessary to adduce on behalf of Her Majesty any other evidence in support of the claim, but judgment shall pass for the Crown, with costs of suit, unless the defendant shall specially plead and duly prove that such certificate is false or fraudulent, or shall specially plead and prove any facts showing that such expenses were not duly incurred under the provisions of this Act, and of the said "Passengers Act, 1855," or either of them: Provided nevertheless, that in no case shall any larger sum be recovered on account of such expenses than a sum equal to twice the total amount of passage money received or due to and recoverable by or on account of the owner, charterer, or master of such passenger ship, or any of them, for or in respect of the whole number of passengers and cabin passengers who may have embarked in such ship, which total amount of passage money shall be proved by the defendant, if he will have the advantage of this limitation of the debt; but if any such passengers are forwarded or conveyed to their intended destination under the provisions of the last preceding section, they shall not be entitled to the return of their passage money, or to any compensation for loss of passage under the provisions of the said 'Passengers Act, 1855."

Passengers forwarded by Governor, &c not entitled to return of passage money.

SCHEDULE (A).

FORM of GOVERNOR'S or CONSUL'S CERTIFICATE of EXPENDITURE in the case of Passengers shipwrecked, &c.

I hereby certify, That, acting under and in conformity with the provisions of the British "Passengers Act, 1855," and of the "Passengers Act Amendment Act, 1863," I have defrayed the expenses incurred in rescuing, maintaining, supplying with necessary bedding, provisions, and stores (*a*), and in forwarding to their destination passengers [including cabin passengers (*b*)], who were proceeding from to in the passenger ship which was wrecked at sea, &c. (*c*).

And I further certify, for the purposes of the sixteenth section of the said "Passengers Amendment Act, 1863," that the total amount of such expenses is pounds, and that such expenses were duly incurred by me under the said Acts or one of them.

Given under my hand, this day of , 18 .

{ *Governor of, &c.*, (or as the case may be) *Her Britannic Majesty's Consul at* .

(*a*) N.B.—1. If more passengers were rescued than forwarded, or if bedding, &c. was not supplied, alter the certificate to suit the facts of the case.

(*b*) N.B.—2. Omit words in brackets when necessary.

(*c*) N.B.—3. State generally the nature of

§§ 55-59.

55. No policy of assurance effected in respect of any passages, or of any passage or compensation monies, by any person by this Act made liable, in the events aforesaid, to provide such passages or to pay such monies, or in respect of any other risk under this Act, shall be deemed to be invalid by reason of the nature of the risk or interest sought to be covered by such policy of assurance.

the disaster and where it occurred. But if the passengers were only left behind without any default of their own, state the fact accordingly.

Insurance of passage money not to be void on account of the nature of the risk.

56. If any passenger in any ship, whether a "passenger ship" or otherwise, shall be landed at any port or place other than the port or place at which he may have contracted to land, unless with his previous consent, or unless such landing shall be rendered necessary by perils of the sea, or other unavoidable accident, the master shall for each offence be liable to a penalty not exceeding 50*l.*, nor less than 10*l.* sterling.

Penalty on wrongfully landing passengers.

Passengers to be maintained for forty-eight hours after arrival.

Penalty.

57. Every passenger in a "passenger ship" shall be entitled for at least forty-eight hours next after his arrival at the end of his voyage to sleep in the ship, and to be provided for and maintained on board thereof in the same manner as during the voyage, unless within that period the ship shall quit such port or place in the further prosecution of her voyage. In case of non-compliance with any of the requirements of this section, the master shall for each offence be liable to a penalty not exceeding 5*l.* sterling.

Passengers' right of action preserved.

58. Nothing herein contained shall take away or abridge any right of action which may accrue to any passenger in any ship or to any other person, in respect of the breach or non-performance of any contract made or entered into between or on behalf of any such passenger or other person, and the master, charterer, or owner of any such ship, or his or their agent, or any passage broker.

Miscellaneous.

Her Majesty may, by orders in council, prescribe rules for purposes herein described.

59. It shall be lawful for Her Majesty, by any order in council, to prescribe such rules and regulations as to Her Majesty may seem fit for the following purposes; (that is to say,)

1st. For preserving order, promoting health, and securing cleanliness and ventilation on board of "passenger ships" proceeding from the United Kingdom to any port or place in Her Majesty's possessions abroad.

2nd. For permitting the use on board of "passenger ships" of an apparatus for distilling water, and for defining in such case the quantity of fresh water to be carried in tanks or casks for the passengers.

3rd. For prohibiting emigration from any port or ports at any time when choleraic or any epidemic disease may be generally prevalent in the United Kingdom or any part thereof, or for reducing the number of passengers allowed to be carried in "passenger ships" generally, or from any particular ports under the provisions of this Act.

4th. For requiring duly qualified medical practitioners to be carried in "passenger ships," in cases where they would not be required to be carried under the provisions of this Act.

Any such order in council may from time to time in like manner be altered, amended, and revoked, as occasion may require. Any copy of such order in council contained in the *London Gazette*, or purporting to be printed by the Queen's printer, shall throughout Her Majesty's dominions be received in all legal proceedings as good and sufficient evidence of the making and contents of any such order in council.

Gazette and copies printed by Queen's printer to be evidence of orders, &c.

60. In every such "passenger ship" the medical practitioner on board, aided by the master thereof, or, in the absence of such medical practitioner, the master of such ship is hereby empowered to exact obedience to all rules and regulations which may be prescribed by any such order in council to be observed on board passenger ships as aforesaid; and any person on board who shall neglect or refuse to obey any such rule or regulation, or who shall obstruct the medical practitioner or master of such ship in the execution of any duty imposed upon him by any such rule or regulation, or who shall offend against any of the provisions of this Act, or who shall be guilty of riotous or insubordinate conduct, shall be liable for each offence to a penalty not exceeding 2*l.* sterling, and, in addition thereto, to be confined in the common gaol for any period not exceeding one month, at the discretion of the justices who shall adjudicate on the complaint.

Surgeon or Master to exact obedience to rules and regulations.

Penalty on refusal.

As to misconduct by passengers, see also under s. 323 of the "Merchant Shipping Act, 1854," p. 296.

§ 60.

Master's Authority over Passengers.

Safety dependent on discipline.

As the safety of the ship and all on board depends on the maintenance of discipline and obedience to the master's orders, passengers are in certain cases bound to obey the master. There is an implied condition in the passenger's contract that he will submit to do what is necessary for the security of the vessel, if ordered by the captain (*a*). But the master must be careful not to impose duties on the passenger that are not warranted by the necessities of the case. If there is a chance of the ship's being attacked, he may order passengers to fight with weapons they understand (*b*). In case of a leak or other danger to the ship, passengers may be required to work at the pumps, or to assist in pulling the ropes (*c*). But they must not be asked to do anything that would be dangerous to them as landsmen, though safe enough for a seaman, such as going out upon the yard-arm during a strong wind, or other duties requiring nautical skill (*d*). The master must exercise his discretion in such cases, and a jury should determine whether the duty imposed on the passenger was reasonable under the circumstances, or not (*e*). A Court of Admiralty can award damages if the captain has exceeded his authority (*f*). In cases of absolute necessity the master may arrest and confine a passenger, for instance, if the passenger has been inciting or taking part in a mutiny, and in such a case the captain is not bound to wait for the actual mutiny to break out; but it has been held to be an excess of authority to confine a passenger in his cabin during seven days for insolence to the captain personally (*g*). In cases of lesser misconduct, or of conduct unbecoming a gentleman in the strict sense of the word, the captain may be justified in excluding a passenger from the mess, and making him take his meals elsewhere (*h*). The contract of the passengers with the master is not for mere ship room and personal existence on board, but for reasonable food, comforts, necessaries, and kindness (*i*). (As to crimes on the high seas and abroad, see the "Merchant Shipping Act, 1854," s. 521, p. 438 *et seq.*; and as to the master's authority over the crew, see under s. 238 of the same Act, p. 208.)

Implied condition on the part of the passenger.

Must not do things dangerous to landsmen.

Passenger may in some cases be arrested.

Exclusion from the mess.

Regulations for Preserving Order and for Promoting Health.

Order in Council.

By an Order in Council, dated January 7th, 1864, made pursuant to the powers given by section 59 of this Act (see p. 516), the following regulations were made;—

Passengers to rise at seven a.m.

1. All passengers who shall not be prevented by sickness or other sufficient cause to be determined by the surgeon, or in ships carrying no

(*a*) Abbott on Shipping (11th ed.), 185; Parsons on Shipping, I., 636.
(*b*) *Boyce* v. *Bayliffe*, 1 Camp. 58.
(*c*) *The Vrede*, Lush, 322; *The Branston*, 2 Hagg. Ad. 3, n, in which cases salvage was refused to passengers assisting in these ways, on the ground that it was their duty to do so.
(*d*) Parsons on Shipping, I., 638.
(*e*) Abbott on Shipping (11th ed.), 186; *Watson* v. *Christie*, 2 B. & P. 224; *Rhodes* v. *Leach*, 2 Stark. 516; *King* v. *Franklin*, 1 F. & F. 360.
(*f*) *The Enchantress*, 1 Hagg. Ad. 395; *The Ruckers*, 4 C. Rob. 73.
(*g*) Kay on Shipmasters, &c., II., 817; *Aldworth* v. *Stewart*, 14 L. T. N. S. 862.
(*h*) *Prendergast* v. *Compton*, 8 C. & P. 454.
(*i*) *Chamberlain* v. *Chandler*, 3 Mason (Amer. Rep.), 242.

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surgeon, by the master, shall rise not later than seven o'clock A.M., at which hour the fires shall be lighted.

Cooks to light the fires.

2. It shall be the duty of the cook, or cooks, appointed under s. 39 of this Act (see p. 506) to light the fires, and to take care that they be kept alight during the day; and also to take care that each passenger, or family of passengers, shall have the use of the fireplace at proper hours, in an order to be fixed by the master.

Beds to be rolled up.

3. When the passengers are dressed their beds shall be rolled up.

Decks to be swept.

4. The decks, including the space under the bottom of the berths, shall be swept before breakfast, and all dirt thrown overboard.

Breakfast.

5. The breakfast hour shall be from eight to nine o'clock, A.M. Before the commencement of breakfast, all the emigrants, except as hereinbefore excepted, are to be out of bed and dressed, and the beds rolled up, and the deck on which the emigrants live properly swept.

Deck to be swept after every meal.

6. The deck shall further be swept after every meal, and after breakfast is concluded, shall be also dry holystoned or scraped. This duty, as well as that of cleaning the ladders, hospitals, round houses, and water-closets, and of pumping water into the cisterns, or tanks, for the supply of the water-closets, shall be performed by a party who shall be taken in rotation from the adult males above fourteen, in the proportion of five to every one hundred emigrants, and shall be considered as sweepers for the day. But the single women shall do all necessary acts for keeping clean, and in a proper state, their own compartment, where a separate compartment is allotted to them, and the occupant of each berth shall see that his or her berth is well brushed out.

Dinner and supper.

7. Dinner shall commence at one o'clock, P.M., and supper at six, P.M.

Passengers to be in bed by ten p.m.

8. The fires shall be extinguished at seven P.M., unless otherwise directed by the master, or required for the use of the sick; and the emigrants shall be in their berths at ten o'clock, P.M., except under the permission or authority of the surgeon, or if there be no surgeon, of the master.

Safety lamps on decks.

9. On each passenger deck there shall be lit at dusk, and kept burning till daylight, three safety lamps, and such further number as shall allow one to be placed at each of the hatchways used by passengers.

Naked lights.

10. No naked light shall be allowed between decks, or in the hold, at any time, or on any account.

Scuttles, &c., when to be opened.

11. The scuttles and stern-ports, if any, shall, weather permitting, be opened at seven o'clock, A.M., and kept open till ten o'clock, P.M., and the hatches shall be kept open whenever the weather permits.

Cooking utensils.

12. The coppers and cooking utensils shall be cleaned every day, and the cisterns kept filled with water.

Beds to be shaken.

13. The beds shall be well shaken and aired on deck, weather permitting, at least twice a week.

Bottom boards of berths.

14. The bottom boards of the berths, if not fixtures, shall be removed and dry-scrubbed, and, weather permitting, taken on deck at least twice a week.

Washing days.

15. Two days in the week shall be appointed by the master as washing days; but no washing or drying of clothes shall on any account be permitted between decks.

Sunday.

16. On Sunday mornings the passengers shall be mustered at ten o'clock, A.M., and will be expected to appear in clean and decent apparel. The Lord's Day shall be observed as religiously as circumstances will admit.

Spirits and gunpowder.

17. No spirits or gunpowder shall be taken on board by any pas-

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senger; and if either of those articles be discovered in the possession of a passenger, it shall be taken into the custody of the master during the voyage, and not returned to the passenger until he has landed, or is on the point of landing.

Hay and straw.

18. No loose hay or straw shall be allowed below for any purpose.

Smoking.

19. No smoking shall be allowed between decks.

Immoral conduct.

20. The following kinds of misconduct are strictly prohibited: that is to say; all immoral or indecent acts or conduct, taking improper liberties, or using improper familiarities, with the female passengers; using blasphemous, obscene, or indecent language, or language tending to a breach of the peace; swearing, gambling, drunkenness, fighting, disorderly, riotous, quarrelsome, or insubordinate conduct; also all deposits of filth, or offensive acts of uncleanliness in the between decks: Provided

Proviso.

that no conviction under the said Passengers Act for any of the offences herein specified shall operate as a bar to any civil or criminal proceedings which may, in the ordinary course of law, be instituted for the same offence by any party aggrieved.

Weapons.

21. Fire-arms, swords, and other offensive weapons, shall, as soon as the passengers embark, be placed in the custody of the master.

Sailors not to mix with passengers.

22. No sailors shall be allowed to remain on the Passenger deck among the passengers except on duty.

Passengers not to enter cookhouse.

23. No passenger shall go into the ship's cookhouse without special permission from the master, nor remain in the forecastle among the sailors on any account.

Ventilating apparatus.

24. In vessels not expressly required by the said "Passengers Act, 1855," to have on board such ventilating apparatus as therein mentioned (see s. 26, p. 491), such other provision shall be made for ventilation as shall be required by the emigration officer at the port of embarkation, or, in his absence, by the officer of customs,

The definitions of the Passengers Act (see s. 3, p. 473) apply to this Order in Council.

Board of Trade to prepare an abstract of Act and Orders in Council.

61. The Board of Trade shall from time to time prepare such abstracts as they may think proper of the whole or any part of this Act, and of any such order in council as aforesaid; and four copies of such abstracts, together with a copy of this Act, shall, on demand, be supplied by the principal officer of customs at the port of clearance to the master of every "passenger ship" proceeding from the United Kingdom to any port or place in Her Majesty's possessions abroad; and such

Such abstract to be posted up in each ship.

master shall, on request made to him, produce a copy of this Act to any passenger on board, for his perusal, and further, shall post, previous to the embarkation of the passengers, and shall keep posted so long as any passenger shall be entitled to remain in the ship, in at least two conspicuous places between the decks on which passengers may be carried, copies of such

Penalty on Master for neglect;

abstracts; and such master shall be liable to a penalty not exceeding forty shillings sterling for every day during any part

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of which by his act or default such abstracts shall fail to be so posted; and any person displacing or defacing such abstracts so posted shall be liable to a penalty not exceeding forty shillings sterling.

and on person defacing abstract.

62. If in any "passenger ship" any person shall during the voyage, directly or indirectly, sell or cause to be sold any spirits or strong waters to any passenger, he shall be liable for every such offence to a penalty not exceeding 20*l.* nor less than 5*l.* sterling.

Sale of spirits prohibited on board passenger ships.

63. Before any "passenger ship" shall clear out or proceed to sea, the master, together with the owner or charterer of the ship, or, in the event of the absence of such owner or charterer, or if the master be the owner or charterer, one other good and sufficient person, to be approved by the chief officer of customs at the port of clearance, shall enter into a joint and several bond, in the sum of 2000*l.*, to Her Majesty, her heirs and successors, according to the form contained in schedule (C.) hereto annexed. Such bond shall not be liable to stamp duty, and shall be executed in duplicate.

Bond to be given by masters of British and foreign passenger ships.

No stamp required.

SCHEDULE (C).

FORM OF BOND to be given by the MASTER and by the OWNER or CHARTERER of a "Passenger Ship."

KNOW all Men by these Presents, that,* are held and firmly bound unto our Sovereign by the Grace of God, of the United Kingdom of Great Britain and Ireland Defender of the Faith, in the sum of Two thousand Pounds of good and lawful Money of Great Britain, to be paid to our said the Heirs and Successors; to which Payment well and truly to be made we bind ourselves and every of us, jointly and severally, for and in the whole, our Heirs, Executors, and Administrators, and every of them, firmly by these Presents. Sealed with our Seals. Dated this day of One thousand eight hundred and fifty .

* Insert here the Christian and Surnames in full, with Occupations and Addresses of each of the Two Obligors.

WHEREAS by the "Passengers Act, 1855," it is amongst other things enacted, that before any "Passenger Ship" shall clear out or proceed to Sea, the Master, together with the Owner or Charterer of the Ship, or in the absence of such owner or charterer, or if the master be the owner or charterer, one other good and sufficient person, to be approved by the chief officer of customs at the port of clearance, shall enter into a bond to Majesty, heirs and successors, in the sum of two thousand pounds:

Now the condition of this obligation is such, that if the ship whereof the above bounden is master, bound to is in all respects seaworthy, ††[and if the said ship shall call at the port of

† The clause within brackets is to be

§ 63.

and there shall be shipped on board at such port pure water for the use of the passengers, sufficient in quantity to afford an allowance of three quarts daily to each statute adult for the period of days on the voyage from such port to the final port or place of discharge of such vessel,] and if (notwithstanding any penalty by the said Act imposed, and whether the same may have been sued for and recovered or not,) all and every the requirements of the said Passengers Act, 1855, (except such of them as relate exclusively to passage brokers and runners,) and of the Emigration Commissioners acting in the manner prescribed by the said Act, and of any Order passed by Her Majesty in Council relating to "Passenger Ships" and now in force, shall in all respects be well and truly performed ‡ [and if the master for the time being of the said ship shall submit himself, in like manner as a British subject being the master of a British passenger ship, to the jurisdiction of the tribunals in Majesty's possessions abroad, empowered by the said Act to adjudicate on offences committed against the said Act], and if moreover all penalties, fines, and forfeitures which the master of such ship may be adjudged to pay for or in respect of the breach or nonfulfilment of any of such requirements as aforesaid shall be well and truly paid, and if all expenses incurred by the Secretary of State or any governor or British consular officer under the provisions of this Act shall also be well and truly paid, then this obligation to be void, otherwise to remain in full force and virtue.

inserted only when the ship is to call at an intermediate port to take in water, as provided by s. 34 of the Act.

‡ This clause to be inserted only in the case of a foreign passenger ship proceeding to any of the British Colonies.

Signed, sealed, and delivered by the above-bounden and in the presence of §

§ Insert names and addresses in full of the witnesses.

‖ [I hereby certify, that the above bond was duly signed, sealed, and delivered according to the law of Great Britain by the said master of the said ship and by the said (*other obligor*)].

‖ Certificate to be signed by the Chief Officer of Customs and forwarded with the bond to the Colony, according to s. 64 of the Act.

Signature { Chief officer of customs for the Port of .
Date 185 .

Bond of £5000 to repay expenses of rescuing and forwarding shipwrecked passengers, where owners and charterers of vessel reside abroad.

26 & 27 Vict. c. 51. s. 17.—In the case of a passenger ship, of which neither the owners nor charterers reside in the United Kingdom, the bond required to be given to the Crown by the sixty-third section of the "Passengers Act, 1855," shall be for the sum of five thousand pounds instead of two thousand pounds; and an additional condition shall be inserted in such bond to the effect that the obligors therein shall, subject to the provisions and limitations hereinbefore contained, be liable for and shall pay to Her Majesty and her successors, as a Crown debt, all expenses which may be incurred under the provisions hereinbefore and in the "Passengers Act, 1855," contained, in rescuing, maintaining, and forwarding to their destination any passengers of such ships who by reason of shipwreck or any other cause, except their own neglect or default, may not be conveyed to their intended destination by or on behalf of the owner, charterer, or master of such ship.

64. It shall be the duty of the chief officer of customs at the port of clearance of any "passenger ship" bound to any of her Majesty's possessions abroad, to certify on one part of such bond that it has been duly executed by the said master of such ship and the other obligor, and to forward the same by post to the colonial secretary of the colony to which such "passenger ship" may be bound; and such certificate shall, in any colonial court of judicature in which the bond may be put in suit, be deemed conclusive evidence of the due execution of the bond by the said master and the other obligor, and it shall not be necessary to prove the handwriting of the officer of customs who may have signed such certificate, nor that he was at the time of signing it chief officer of customs at the port of clearance: Provided that no such bond shall be put in suit in any of Her Majesty's possessions abroad after the expiration of three calendar months next after the arrival therein of the said ship, nor in the United Kingdom after the expiration of twelve calendar months next after the return of the said ship and of the said master to the United Kingdom.

Counterpart of bond to be certified, and sent to the colony to which ship bound, and to be received in evidence without further proof of execution.

65. In the absence of any agreement to the contrary, the owner shall be the party ultimately responsible, as between himself and the other persons hereby made liable in respect of any default in complying with the requirements of this Act; and that if any such last-mentioned person shall pay any monies hereby made payable to or on behalf of any such passengers as aforesaid, the person so paying the same shall be entitled, in the absence of any such agreement as aforesaid, to sue for and recover from the owner the amount so paid, together with costs of suit.

In the absence of agreement to the contrary the owner to be responsible in respect of default.

Passage Brokers.

66. No person whatever shall directly or indirectly act as a passage broker in respect of passages from the United Kingdom to any place out of Europe, and not being within the Mediterranean Sea, or shall sell or let, or agree to sell or let, or be in anywise concerned in the sale or letting of passages in any ship, whether a "passenger ship" or otherwise, proceeding from the United Kingdom to any such place as aforesaid, unless such person, with two good and sufficient sureties to be approved by the emigration officer at the port nearest to the

No person to act as a passage broker without a licence.

§ 66. place of business of such person, shall have previously entered into a joint and several bond, in the sum of 1000*l.* to Her Majesty, her heirs and successors, according to the form contained in schedule (D.) hereto annexed, which bond shall be renewed on each occasion of obtaining such licence as hereinafter mentioned, and shall be in duplicate, without stamps, and one part thereof shall be deposited with the Board of Trade, and the other part thereof with the emigration officer at the port nearest to the place of business of such person; nor unless such person shall have obtained a licence, as hereinafter mentioned, to let or sell passages, nor unless such licence shall then be in force; and if any person shall offend in any particular against this enactment, every person so offending shall for each offence be liable to a penalty not exceeding 50*l.* nor less than 20*l.*, to be sued for and recovered as hereinafter mentioned: Provided, that such bond shall not be required of any person who shall be one of the sworn brokers of the city of London: Provided also, that there shall be excepted from the operation of this section the Board of Trade and any persons contracting with them, or acting under their authority, and also any person acting as the agent of any passage broker in pursuance of an appointment made in the form prescribed by schedule (I.) hereto annexed, signed by such passage broker, and countersigned by such emigration officer as aforesaid: Provided further, that the acts and defaults of any person acting under the authority or as agent of any passage broker shall, for the purposes of this Act, be deemed to be also the acts and defaults of such passage broker: Provided also, that nothing hereinbefore contained shall be held or construed to prevent the said emigration officer from accepting the bond of a guarantee society, such bond and such guarantee society as shall have been approved by the Lords Commissioners of Her Majesty's Treasury, in lieu of the bond of two good and sufficient securities as aforesaid.

Board of Trade and agents of passage brokers exempted from this section.

Passage brokers to be responsible for their agents.

SCHEDULE (D).

FORM OF PASSAGE BROKER'S ANNUAL BOND, with two sureties to be approved by the Emigration Officer at the nearest Port.

* Insert Christian and surnames in

KNOW all Men by these Presents, That we, *A. B.** of, *C. D.* of, &c. and *E. F.* of, &c. are held and firmly bound unto our Sovereign by the Grace of God, of the United Kingdom

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of Great Britain and Ireland Defender of the Faith, in the sum of One thousand pounds of good and lawful money of Great Britain, to be paid to our said the heirs and successors; to which payment well and truly to be made we bind ourselves and every of us, jointly and severally, for and in the whole, our heirs, executors, and administrators, and every of them, firmly by these presents. Sealed with our seals. Dated this day of One thousand eight hundred and fifty .

full, with occupations and address of each of the parties.

WHEREAS by the "Passengers Act, 1855," it is amongst other things enacted, that no person whatever, save as therein excepted, shall directly or indirectly act as a passage broker in respect of passages from the United Kingdom to any place out of Europe, and not being within the Mediterranean Sea, or shall sell or let, or agree to sell or let, or be in anywise concerned in the sale or letting of passages in any ship, whether a "passenger ship" or otherwise proceeding from the United Kingdom to any such place as aforesaid, unless such person, with two good and sufficient sureties, to be approved by the emigration officer at the port nearest the place of business of such person, shall have previously entered into a joint and several bond to Her Majesty, Her heirs and successors, in the sum of one thousand pounds: and whereas the said *C. D.* and *E. F.* have been duly approved by the proper emigration officer as sureties for the said *A. B.*:

Now the condition of this obligation is such, that if the above-bounden *A. B.*, and every agent whom he may employ in his business of a passage broker, shall well and truly observe and comply with all the requirements of the said recited Act, so far as the same relate to passage brokers, and further shall well and truly pay all fines, forfeitures, and penalties, and also all sums of money, by way of subsistence money, or of return of passage money and compensation, to any passenger, or on his account, together with all costs which the above-bounden *A. B.*, or any of his agents as aforesaid, may at any time be adjudged to pay under or by virtue of any of the provisions of the said recited Act, then and in such case this obligation to be void, otherwise to remain in full force.

Signed, sealed, and delivered by the above-bounden *A. B.*, *C. D.*, and *E. F.*, in the presence of †

† Insert the names and addresses in full of the witnesses.

N. B.—This bond is to be executed in duplicate, in the presence of and to be attested by an emigration officer or his assistant, or an officer of customs, or a magistrate, or a notary public. One part is to be deposited with the Board of Trade in London, and the other part with the emigration officer at the port nearest to the place of business of the broker. Each member of a firm or partnership who acts as a passage broker must give a separate bond with two sureties.

[The bond is exempt from stamp duty, but must be renewed annually with licence].

SCHEDULE (I.)

FORM OF APPOINTMENT of Passage Broker's Agent.

I, *A. B.*, of, *&c.* (*or as the case may be*) one of the partners and on behalf of the firm of, *&c.* (*name all the partners and the style of the*

DIRECTIONS.

Insert in the

§§ 66-67.

firm) carrying on the business of at , do hereby nominate and appoint you, *C. D.* of, *&c.*, to act as my agent and on my behalf in the sale or letting of passages and otherwise in the business of a passage broker, according to the provisions of "The Passengers Act, 1855."

Signature in full . Place and date 185 .

Counter Signature { Emigration officer at the Port of

proper places the Christian and surnames in full, with the correct addresses and designations of the constituent and agent respectively.

How passage brokers' licences may be obtained.

67. Any person wishing to obtain a licence to act as a passage broker in respect of passages from the United Kingdom to any place out of Europe, and not being in the Mediterranean Sea, shall make application for the same to the justices at the petty sessions held for the district or place in which such person shall have his place of business; and such justices are hereby authorised (if they shall think fit) to grant a licence for that purpose, according to the form in the schedule (E.) hereunto annexed, which licence shall continue in force until the thirty-first day of December, in the year in which such licence shall be granted, and for thirty-one days afterwards, unless sooner forfeited, as herein mentioned; and upon granting such licence the justices shall cause a notice thereof according to the form in schedule (F.) hereto annexed to be transmitted forthwith by the post to the Board of Trade at their office in London: Provided always, that no such licence shall be granted unless the person applying for the same shall show to the satisfaction of the justices that he has given such bond to Her Majesty, her heirs and successors, as hereinbefore required, and has deposited one part thereof at the office in London of the said Board, or is a sworn broker of the city of London, and has in either case given notice to the said Board fourteen clear days at least before such application of his intention to apply for the same, which notice shall be transmitted by the post to the office in London of the said Board, and shall be according to the form contained in the schedule (G.) hereto annexed: Provided also, that any justices of the peace who shall adjudicate on any offence against this Act, or on any breach or non-performance of any of the requirements thereof, are hereby authorised, if they shall think fit, and the offender is a passage broker, to order his licence to be forfeited, and the same shall thereupon be forfeited accordingly; and the said justices making such order shall forthwith cause notice of such forfeiture, in the form contained in

Justices to give notice to Board of Trade of licence granted.

Notice to be given to Board of Trade of intended application for licences.

Power to justices to order licences to be forfeited, who shall give notice of the same to Board of Trade.

schedule (H.) hereunto annexed, to be transmitted by the post to the said Board at their office in London: in Scotland, where any person wishing to obtain such licence shall make application for the same to the sheriff or steward or sheriff substitute or steward substitute, in place of to such justices of the peace as aforesaid, the forms given in the said schedules (D.), (E.), (F.), (G.), and (H.) respectively, shall still be adhered to, with such alterations as may be necessary.

§ 67.

As to application for licences in Scotland.

(Schedule D is annexed to the preceding section.)

SCHEDULE (E).

FORM OF PASSAGE BROKER'S LICENCE.*

A. B.† of in the having shown to the satisfaction of me (*or* us) the undersigned, that he hath given bond to Majesty, as by the "Passengers Act, 1855," required, and also given fourteen days' previous notice to the Board of Trade of his intention to make application for a licence to carry on the business of a passage broker in respect of passages from the United Kingdom to any place out of Europe, and not being within the Mediterranean Sea, I (*or* we), the undersigned, having had no sufficient cause shown to me (*or* us), and seeing no valid reason why the said *A. B.* should not receive such licence, do hereby license and authorise the said *A. B.* to carry on the business of a passage broker as aforesaid until the end of the present year, and thirty-one days afterwards, unless this licence shall be sooner determined by forfeiture for misconduct on the part of the said *A. B.* as in the "Passengers Act, 1855," is provided.

Given under my hand and seal (*or* our respective hands and seals), this day of 185 at .

Signature (L.S.) { Justices of the peace, police, *or* stipendiary magistrate, *or* sheriff *or* steward, *or* sheriff *or* steward substitute, *as the case may be.*

† The Christian and surnames in full, with the address and trade or occupation of the party applying for the licence, must be correctly inserted. If a member of a firm, the Christian and surnames of all the members must be given.

* N.B.—Each member of a firm or partnership who acts as a passage broker must have a separate licence.

SCHEDULE (F.)

FORM OF NOTICE to be given to the Board of Trade by Justices granting a Licence.

Gentlemen,

THIS is to give you Notice, That we (*or* I), the undersigned, did on the day of 185 license *A. B.* of* to carry on the

* Insert the

§§ 67-69.

business of a passage broker under the provisions of the "Passengers Act, 1855."

Signatures } Justices of the Peace, *or as the case may be.*

Place . Date .

To the Board of Trade, London.

Christian and surnames in full, with the address and occupation of the party.

SCHEDULE (G.)

FORM OF NOTICE to be given to the Board of Trade by any applicant for a Passage Broker's Licence.

Gentlemen,

I, *A. B.** of in do hereby give you notice, That it is my intention to apply, after the expiration of fourteen clear days from the putting of this notice into the post, to the Justices to be assembled in Petty Sessions to be held† (*or* to the police *or* stipendiary magistrate for the city *or* borough *or* district of *or* if in Scotland to the sheriff *or* steward of *as the case may be*), for a licence to carry on the business of a passage broker under the provisions of "The Passengers Act, 1855."

Signature . Date .

To the Board of Trade, London.

* The Christian names and surname in full, with the address and trade or occupation of the party applying for a licence, must be here correctly inserted.

† The place or district in which the party giving the notice has his place of business.

SCHEDULE (H.)

FORM OF NOTICE to be given by the Justices to the Board of Trade, of Forfeiture of a Passage Broker's Licence.

Gentlemen,

THIS is to give you notice, That the licence granted on the day of 185 to *A. B.** of in to act as a passage broker, was on the day of now last past duly declared by me (*or* us) the undersigned Justices of the Peace in Petty Sessions assembled, to be forfeited.†

Signatures . Place and date 185 .

To the Board of Trade, London.

* The Christian and surnames in full, with the address and trade or occupation of the party, to be here inserted.

† Here state generally the reason of forfeiture.

68. *Repealed by the Statute Law Revision Act*, 1875.

Passage brokers to employ no agents except those expressly appointed by them.

69. No passage broker shall employ as an agent in his business of passage broker any person not holding from him the appointment of agent as hereinbefore mentioned; and every person holding such appointment shall produce the same, on the demand of any emigration officer, or of any person treating

for a passage under this Act: for any breach or violation of this enactment in any particular, the offender shall be liable for each offence to a penalty not exceeding 50*l.* nor less than 20*l.*

Agents to produce their appointments on demand.

70. If any person shall by false representation as to the size of a ship, or otherwise, or by any false pretence or fraud whatsoever, induce any person to engage a passage in any ship, the person so offending shall for each offence be liable to a penalty not exceeding 20*l.* nor less than 5*l.* sterling.

Penalty on persons fraudulently inducing others to engage passages.

71. Every person whatever, except the Board of Trade and persons acting for them and under their direct authority, who shall receive money from any person for or in respect of a passage in any ship, or of a cabin passage in any "passenger ship" proceeding from the United Kingdom to any place out of Europe, and not being within the Mediterranean Sea, shall give to the person paying such money a contract ticket, signed by the owner, charterer, or master of the ship or "passenger ship" (as the case may be) in which the passage is to be provided, or by some person in their or his name, and on their or his behalf: such contract ticket shall be made out in plain and legible characters on a printed form, which in the case of cabin passengers shall be according to the form contained in schedule (K.) hereto annexed, and in the case of all other passengers in the form contained in schedule (L.) hereto annexed, or according to such other form as in either case may from time to time be prescribed by the said Board in any notice issued by them and published in the *London Gazette:* and any directions contained on the face of such form of contract ticket shall be obeyed in the same manner as if herein set forth. In case of non-compliance with any of the requirements of this section, or of any of the directions on such form of contract ticket not inconsistent with this Act, the person so offending shall for each offence be liable to a penalty not exceeding 50*l.* nor less than 5*l.* sterling: provided always, that such contract tickets shall not be liable to any stamp duty.

Contract tickets for cabin and other passengers.

Penalty for non-compliance.

No stamp required.

SCHEDULE (K).

Counterpart of Cabin Passenger's Contract Ticket.

This counterpart is to be produced by the owner, charterer, or master of the ship to the emigration officer at the port of embarkation (or, if no such officer, to the officer of customs), or to any one appointed by him to receive it, under a penalty for default not exceeding £10.

These directions form part of, and must appear on, each contract ticket.

1. A contract ticket in this form must be given to every cabin passenger engaging a passage in a "passenger ship" from the United Kingdom to any place out of Europe, and not being within the Mediterranean Sea, under a penalty not exceeding £50.
2. Unless the passengers are to have a free table, the victualling scale for the voyage must be appended to the contract ticket.
3. All the blanks must be correctly and legibly filled in, and the ticket must be legibly signed with the Christian names and surname and address in full of the party issuing the same.
4. The day of the month on which the ship is to sail must be inserted in words and not in figures only.
5. When once issued, this ticket must not be withdrawn from the passenger, nor any alteration or erasure made in it unless with his consent.

Ship of tons register, to sail from for on the day of 185 .

Names.	No. of Persons. Adults above 12 Years.	No. of Persons. Children 12 Years and under.
Total No. of Persons.		

In consideration of the sum of £ I hereby agree with the person named in the margin hereof that such person shall be provided with class cabin passage in the above-named ship, to sail from the port of for the port of in with not less than cubical feet of luggage for each person, and that such person shall be victualled as class cabin passenger during the voyage, and the time of detention at any place before its termination; and I further engage to land the person aforesaid, with luggage, at the last-mentioned port, free of any charge beyond the passage-money aforesaid; and I hereby acknowledge to have received the sum of £ in { full / part } payment of such passage-money.

Signature in full.
Place and date.

[If signed by a broker or agent, state on whose behalf.]

Deposit £
Balance £
Total £

to be paid at

N.B.—This contract ticket is exempt from stamp duty.

Cabin Passenger's Contract Ticket.

These directions and the "notices to passengers" below, form part of, and must appear on, each contract ticket.

1. A contract ticket in this form must be given to every cabin passenger engaging a passage in a "passenger ship" from the United Kingdom to any place out of Europe and not being within the Mediterranean Sea, under a penalty not exceeding £50.
2. Unless the passengers are to have a free table, the victualling scale for the voyage must be appended to the contract ticket.
3. All the blanks must be correctly and legibly filled in, and the ticket must be legibly signed with the Christian names and surname and address in full of the party issuing the same.
4. The day of the month on which the ship is to sail must be inserted in words, and not in figures only.
5. When once issued, this ticket must not be withdrawn from the passenger, nor any alteration or erasure made in it unless with his consent.

Ship of tons register, to sail from for on the day of 185 .

Names.	No. of Persons. Adults above 12 Years.	No. of Persons. Children 12 Years and under.
Total No. of Persons.		

In consideration of the sum of £ I hereby agree with the person named in the margin hereof that such person shall be provided with class cabin passage in the above-named ship, to sail from the port of for the port of in with not less than cubical feet of luggage for each person, and that such person shall be victualled as class cabin passenger during the voyage, and the time of detention at any place before its termination; and I further engage to land the person aforesaid, with luggage, at the last-mentioned port, free of any charge beyond the passage-money aforesaid; and I hereby acknowledge to have received the sum of £ in { full / part } payment of such passage-money.

Signature in full.
Place and date.

[If signed by a broker or agent, state on whose behalf.]

Deposit £
Balance £
Total £

to be paid at

Notice to Cabin Passengers.

1. If cabin passengers, through no default of their own, fail to obtain a passage in the ship, and on the day named in this contract ticket, they may obtain redress for breach of contract by summary process under the 73rd section of the "Passenger Act, 1855."
2. Cabin passengers must produce, on demand, their contract tickets to the Government emigration officer under a penalty not exceeding £10. This ticket should therefore be preserved and kept in readiness to be produced on board the ship.

N.B.—This contract ticket is exempt from stamp duty.

SCHEDULE (L).

Ship .
Counterpart of passenger's contract ticket.

THIS part of the contract ticket is to be separated from the other, and to be delivered by the passenger to the emigration officer at the port of embarkation (or, if no such officer, to the officer of customs), or to any one appointed by him to receive it, under a penalty not exceeding £10.

CONTRACT TICKET.

I engage that the persons mentioned below shall be provided with a steerage passage to and be landed at the Port of in in the ship of tons with not less than ten cubic feet for luggage for each statute adult, and shall be victualled during the whole voyage according to the dietary scale prescribed by law. The ship to receive her passengers at on the day of 185 . Passage money, including government dues, if any, and all charges of landing, £ .

Names.	Ages.

Souls, equal to * statute adults.

To be signed in full by the party issuing the ticket.

* Insert number of souls and of statute adults respectively.

PASSENGER'S CONTRACT TICKET.

These directions and the "Notices to Passengers" below, form part of, and must appear on, each contract ticket.

1. A contract ticket in this form must be given to every passenger engaging a passage from the United Kingdom to any place out of Europe, and not being within the Mediterranean Sea.
2. The victualling scale for the voyage must be printed in the body of the ticket.
3. All the blanks must be correctly filled in, and the ticket must be legibly signed with the Christian names and surname and address in full of the party issuing the same.
4. The day of the month on which the passengers are to embark must be inserted in words and not in figures.
5. When once issued, this ticket must not be withdrawn from the passenger, nor any alteration, addition, or erasure made in it.

Ship of tons register, to take in passengers at for on the day of , 185 .

Names.	Ages.	Equal to statute adults.

I engage that the person named in the margin hereof shall be provided with a steerage passage to, and shall be landed at, the port of in in the ship with not less than ten cubic feet for luggage for each statute adult, and shall be victualled during the voyage and the time of detention at any place before its termination, according to the subjoined scale, for the sum of £ including Government dues before embarkation, and head money, if any, at the place of landing, and every other charge, except freight for excess of luggage beyond the quantity above specified, and I hereby acknowledge to have received the sum of £ in { full / part } payment.

The following quantities, at least, of water and provision (to be issued daily) will be supplied by the master of the ship, as required by law, viz.: to each statute adult 3 quarts of water daily, exclusive of what is necessary for cooking the articles required by the Passengers Act to be issued in a cooked state; and a weekly allowance of provisions according to the following scale:

[Here insert the victualling scale intended to be used on the voyage. This must be either the scale prescribed in the 35th section of the "Passengers Act, 1855," or that scale modified by the introduction of articles authorised by the Act, to be substituted for oatmeal, rice, and potatoes.]

[N.B.—If mess utensils and bedding are to be provided by the ship, the stipulation must be inserted here.]

Signature in full.
Place and date.

[If signed by a broker or agent, state on whose behalf.]

Deposit £
Balance £ to be paid at
Total £

NOTICE TO PASSENGERS

1. If passengers, through no default of their own, are not received on board on the day named in their contract tickets, or fail to obtain a passage in the ship, they should apply to the Government emigration officer at the port, who will assist them in obtaining redress under the Passengers Act.
2. Passengers should carefully keep this part of their contract ticket till after the end of the voyage.

N.B.—This contract ticket is exempt from stamp duty.

§§ 72-75.

Penalty for inducing any one to part with contract ticket.

72. Any person who shall alter or cause to be altered, after it is once issued, or shall induce any person to part with, render useless, or destroy any such contract ticket, during the continuance of the contract which it is intended to evidence (except in the case of cabin passengers who may have consented thereto), shall be liable in each case to a penalty not exceeding 20*l.* sterling.

Summary remedy for breach of contract.

73. Any question which may arise respecting the breach or non-performance of any of the stipulations in any such contract ticket, may, at the option of any passenger or cabin passenger interested therein, be heard and determined in a summary way by the justices of the peace, magistrates, sheriffs, or other officers hereinafter authorised to adjudicate on offences and complaints under the Act, who are hereby authorised to try such questions, and if they shall find that a breach of contract has been committed, to award to the complainant such damages and costs as they may think fit, not exceeding in any case the amount of the passage money specified in such contract ticket and 20*l.*; and if such damages and costs be not at once paid, payment thereof shall thereupon be enforced, in the same manner and by the same processes as the payment of subsistence money, or the return of passage money, may be enforced under this Act: Provided that if any passenger shall have obtained compensation or redress, under any of the other provisions of this Act, he shall not be entitled to sue under this section for damages for the same matter or cause of complaint. (*See s.* 84, *et seq. p.* 536.)

Penalty on cabin passengers and on masters, &c., omitting to produce contract tickets.

74. If any cabin or other passenger shall, on demand of any emigration officer, refuse or omit to produce his contract ticket, or if any owner, charterer, or master of a ship shall on like demand refuse or omit to produce to any emigration officer in the United Kingdom the counterpart of any contract ticket issued by them, or on their behalf, for the inspection of such emigration officer, and for the purposes of this Act, every person so offending against the requirements of this section shall for each offence be liable summarily to a penalty not exceeding 10*l.*

Penalty on persons acting as runners without licence and

75. Any person who shall act as an "emigrant runner" (*see s.* 3, *p.* 473) without having previously been licensed and registered as hereinafter mentioned, or who while so acting

§§ 75-77.

shall omit to wear conspicuously on his breast such badge as hereinafter mentioned, or who shall employ as an "emigrant runner" any person not duly licensed and registered, shall for each offence be liable to a penalty not exceeding five pounds nor less than twenty shillings.

badge, and on passage brokers employing them.

76. The justices of the peace at any petty sessions held for the district or place within which any person wishing to act as an "emigrant runner" is to carry on his business may upon the recommendation in writing of an emigration officer or of the chief constable or other head officer of police of such district or place (but not otherwise) grant if they shall think fit, to such person wishing to act as runner a licence for that purpose according to the form in schedule (M.) hereto annexed, and such runner shall within forty-eight hours thereafter (under a penalty not exceeding forty shillings for any default) lodge such licence with the nearest emigration officer, who shall register the name and abode of such runner in a book to be kept for that purpose, and shall number each name registered in arithmetical progression, and shall supply to such runner, on his paying a sum not exceeding seven shillings for the same, a badge of such form and description as shall be approved by the Board of Trade.

Mode of licensing and registering runners.

SCHEDULE (M).

FORM of EMIGRANT RUNNER'S Annual Licence.

A. B. (*) of in the having made application in writing to us, the undersigned Justices of the Peace assembled in Petty Sessions, for the (†) of to grant to him a licence to enable him to be registered as an Emigrant Runner in and for (†) , and the said [*A. B.*] having also been recommended as a proper person to receive such licence by an emigration officer, *or* by the chief constable [*or other head officer of police, as the case may be*] of [*the district, town, or place in which the said A. B. is to carry on his business*] : We, the under-mentioned justices, having no sufficient cause shown to us, and seeing of ourselves no valid reason why the said *A. B.* should not receive such licence, do hereby grant to him this licence for the purposes aforesaid, subject nevertheless to be revoked for misconduct on the part of the said *A. B.*, as in the "Passengers Act, 1855," is provided.

* The Christian and surnames in full, with the address of the party applying for the licence, must be here correctly inserted.

† City, town, or district in which the emigrant runner is to carry on his business.

77. Every such "emigrant runner's" licence shall continue in force until the thirty-first day of December in the year in which it shall be granted, unless sooner revoked by any justice

Emigrant

§§ 77-81.

of the peace, for any offence against this Act or for any other misconduct committed by the holder of such licence. In case of any renewed licence it shall be sufficient for the emigration officer to note the fact, and the date of the renewal, in his registry book against the original entry therein of the name of the runner holding such renewed licence.

runner's licence to be renewed annually.

Penalty on runner for certain acts of misconduct.

78. If any "emigrant runner" shall refuse or fail to produce, on demand, his badge for inspection, or to permit any person to take the number thereof, or if he shall fail within forty-eight hours to give to the emigration officer of the port or place within which he is licensed to act notice in writing of any change in his place of abode, in order that his new abode may be registered, or of the loss of his badge, or if he shall mutilate or deface his badge or wear the same while unlicensed, or wear any other than the one delivered to him by such emigration officer as aforesaid, or permit any other person to use his badge, he shall for each such offence be liable to a penalty not exceeding forty shillings and to the forfeiture of his licence, if the convicting justices or magistrate shall so determine; and any person retaining or using any "emigrant runner's" badge not issued to him under the provisions of this Act, or counterfeiting or forging any such badge, shall for each such offence be liable to a penalty not exceeding £5.

Penalty for using badges not lawfully issued.

How fresh badges may be obtained.

79. Such emigration officer as last aforesaid may, if he thinks fit, on payment to him of the sum of five shillings, deliver a new badge to any licensed "emigrant runner" who shall satisfy such officer that he has lost his original badge, or who shall deliver up the same in a mutilated or defaced state.

Runners unauthorised, not entitled to commission.

80. No "emigrant runner" shall be entitled to recover from any passage broker any fee, commission, or reward for or in consideration of any service connected with emigration, unless he shall be acting under the written authority of such passage broker, nor, under a penalty for each offence not exceeding 5*l.*, shall take or demand from any person about to emigrate any fee or reward for the procuring of his passage, or in any way relating thereto.

List of runners to be exhibited by brokers and

81. Every passage broker shall exhibit and keep constantly exhibited in some conspicuous place in his office or place of business a correct list, in plain and legible characters, contain-

ing the names and addresses in full of every person for the time being holding such authority to act as his agent or as an emigrant runner for him as aforesaid, and shall on or before the fifth day, or if that day be a Sunday, on or before the fourth day in every month, transmit a true copy of such list, duly signed by him, to the emigration officer stationed nearest to the place of business of such licensed passage broker, and shall report to such emigration officer every discharge or fresh engagement of an agent or of an "emigrant runner" within twenty-four hours of the same taking place. In case of non-compliance with any of the requirements of this section, the person so offending shall be liable for each offence to a penalty not exceeding 5*l.* nor less than 2*l.*

sent to emigration officers.

Penalty.

82. It shall be lawful for the trustees or other persons charged with the management of any docks or basins in any port within the United Kingdom from which "passenger ships" are despatched to make, and from time to time to alter, amend, or repeal, such rules and byelaws as may be necessary for prescribing the docks, basins, or other places at which persons arriving by sea at such ports for the purpose of emigrating, or actually emigrating therefrom, shall be landed and embarked, and the mode of their landing and embarkation, and for licensing porters to carry their luggage and otherwise to attend upon them, and for the storing and safe custody of their luggage, and for admitting persons to and excluding persons from access to such docks or basins, and for attaching a penalty not exceeding 5*l.* for the breach of any of such rules or bye-laws, such penalty to be sued for and recovered as other penalties are by this Act directed to be recovered, except that instead of an emigration officer such trustees or other persons as aforesaid shall sue for and recover the same: And it shall further be lawful for such trustees, by their officers or servants, or by any police officer, to arrest and detain any person charged with the breach of any such rule or bye-law until brought before any justice of the peace, who is hereby authorised to adjudicate on the offence in a summary way: Provided that no such rules or bye-laws shall take effect until they shall have been approved by one of Her Majesty's principal Secretaries of State, and published by his authority in the *London Gazette*, which publication shall for all purposes

Trustees of docks may pass bye-laws for regulating the landing and embarkation of intending emigrants and for licensing emigrant porters.

Bye-laws to be approved by Secretary of State, and published in the *London Gazette*.

§§ 82-84.

be deemed conclusive evidence of such rules and bye-laws, and of the approval thereof by such Secretary of State.

Penalty for falsifying documents to obtain passages from Board of Trade and for personation.

83. And whereas the Board of Trade and persons acting under their authority issue from time to time certain forms of application and other papers for the use of persons desirous of emigrating by their assistance: And whereas it is expedient to afford additional security against the falsification or misuse of such forms and papers, and of any certificate of marriage or of birth or baptism, or other document or statement adduced in support of any application to the said Board for such assistance: be it therefore enacted, that if any person shall falsely represent himself to be or falsely assume to act as the agent of the said Board, or shall sell any such form of application, paper, or embarkation order, or shall wilfully make any false representation in any such form of application, paper, certificate, or document as aforesaid, or shall forge or fraudulently alter any signature or statement contained therein respectively, or shall personate any person named therein respectively, or shall aid or in any way abet any person in any such false representation, forgery, alteration, or personation, the person so offending shall be liable for each such offence to a penalty not exceeding 50*l.* nor less than 2*l.* sterling.

Extension of penalties for offences connected with applications for assistance in emigration.

35 & 36 Vict. c. 73, s. 6.—The provisions contained in the eighty-third section of the Passengers Act, 1855, shall extend to any forms of application or other papers issued by or under the authority of one of Her Majesty's Principal Secretaries of State, for the use of persons desirous of emigrating by his assistance, and to any certificate, document, or statement adduced in support of any application to such secretary for such assistance.

Procedure for Penalties, etc.

By whom penalties are to be recovered.

84. All penalties and forfeitures imposed by this Act shall be sued for in the United Kingdom by any emigration officer or his assistant or by any person authorised thereto by the Board of Trade, or by any collector or comptroller of Her Majesty's customs, or by any other officer of Her Majesty's customs authorised thereto in writing by the Commissioners of Her Majesty's Customs, and in any of her Majesty's possessions abroad by any government emigration officer or agent, or

by any such collector or comptroller of customs, or other officer of customs so authorised as aforesaid, or by any officer authorised to sue for penalties and forfeitures under this Act by writing under the hand and seal of the governor of any such possession; and the Board of Trade, and the Commissioners of Her Majesty's Customs, and every such governor, are hereby respectively empowered to grant such authority as aforesaid: and all sums of money made recoverable by this Act as return of passage money, subsistence money, damages, or compensation may be sued for and recovered by and for the use of any passenger entitled thereto under this Act, or by any such officer as aforesaid, for and on behalf and to the use of any such passenger or any number of such passengers respectively, and in any case either by one or several informations or complaints.

By whom passage, subsistence, and compensation moneys may be recovered.

85. All penalties imposed and all sums of money made recoverable under this Act by way of passage money, subsistence money, compensation, or damages for the breach of any stipulation in any contract ticket, shall and may be sued for and recovered before any two or more justices of the peace acting in any part of Her Majesty's dominions or possessions in which the offence shall have been committed or the cause of complaint shall have arisen, or in which the offender or party complained against shall happen to be, or acting in any county or borough, or place adjacent to any navigable river or inlet of the sea on which such offence shall have been committed or cause of complaint have arisen; and upon information or complaint made before any one justice of the peace acting as aforesaid, he shall issue a summons, according to the form in the schedule (N.) hereto annexed, requiring the party offending or complained against to appear at a time and place to be named therein; and every such summons shall be served on the party offending or complained against, or shall be left at his last known place of abode or of business, or on board any ship to which he may belong; and if such party shall not appear accordingly, then (upon proof of the due service of the summons by delivering the summons or a copy thereof to the party, or at his last known place of abode or of business, or on board any ship to which he may belong, to the person in charge of any such ship,) any two of such justices so acting as

Tribunal for adjudicating on offences and complaints under this Act.

§ 85. aforesaid may either hear and determine the case in the absence of the party, or either of them may issue his warrant for apprehending and bringing such party before them or any two justices so acting as aforesaid; or the justice before whom the charge shall be made, if he shall have reason to suspect, from information upon oath, that the party is likely to abscond, may issue such warrant in the first instance, without any previous summons; and either upon the appearance of the party offending or complained against, or in his absence as aforesaid, any two of such justices so acting as aforesaid may hear and determine the case, either with or without any written information or complaint; and upon proof of the offence, or of the complainant's claim, (as the case may be,) either by confession of the party offending or complained against, or upon the oath of one or more credible witness or witnesses (and the justices are hereby authorised to summon and swear any witnesses who may be deemed necessary), it shall be lawful for such justices so acting as aforesaid to convict the offender, or to adjudicate upon the complaint, (such conviction or adjudication to be drawn up according to one of the forms of conviction or adjudication contained in schedule (O.) hereto annexed, or as near thereto as the circumstances of the case will admit,) and upon every such conviction to order the offender to pay such penalty as they may think proper, not exceeding the penalties hereinbefore imposed, and upon every such adjudication to order the party complained against to pay to the party suing for the same the sum of money or damages sued for, or so much thereof as such justices shall think the complainant justly entitled to, together with, in every case, the costs of the proceedings; and if the moneys and costs mentioned in such conviction or adjudication be not paid immediately or within the time limited in the order it shall be lawful for any two of such justices so acting as aforesaid, by warrant, (and although the written order of conviction or adjudication, or any minute thereof, may not have been served,) to cause the party offending to be committed to gaol, there to be imprisoned, with or without hard labour, according to the discretion of such justice, for any term not exceeding three calendar months, unless such moneys and costs be sooner paid and satisfied: Provided always, that in all proceedings

Proviso where no forms of

taken under this Act for which no form is herein expressly provided it shall be lawful to use forms similar, as nearly as circumstances will admit, to those contained in the schedule to an Act passed in the session of parliament holden in the eleventh and twelfth years of the reign of Her present Majesty, chapter forty-three.

§ 85. proceeding are prescribed by this Act.

SCHEDULE (N.)

FORM of SUMMONS for a DEFENDANT or a WITNESS.

A. B. Complainant.
C. D. Defendant.

County, *or* city, *or* borough, or police district of (*as the case may be*).

THIS is to command you to appear without fail on the day of instant (*or* next) at o'clock in the noon at before me, or other the magistrate or justices of the peace then and there present (*) [to answer the complaint of (an emigration officer, *or* assistant emigration officer, *or* officer of customs, or (*in the colonies* a government emigration *or* immigration agent, *as the case may be*), for a breach of the section (*or* sections, *as the case may be*) of the Passengers Act, 1855,] (†) [*or* to give evidence in the complaint of *A. B.* against *C. D.* for breach of the Passengers Act, 1855].

* Insert this when the defendant is summoned.

† Insert this in case a witness is summoned.

Signed { Justice of the peace, *or* police *or* stipendiary magistrate, *or* sheriff *or* steward, *or* sheriff substitute, *or* steward substitute, *as the case may be.*

Dated this day of one thousand eight hundred and .

To .

SCHEDULE (O).

FORM of CONVICTION and ORDER of ADJUDICATION under the Passengers Act, 1855, when the DEFENDANT appears.

A. B. Complainant.
C. D. Defendant.

County, *or* city, *or* borough, *or* police district, *or* stewartry of (*as the case may be*)

BE it remembered, That on the day of instant, *C. D.* of personally came before me (*or* us, *as the case may be*), at to answer the complaint of *A. B.* (*) for a breach of the section (*or* sections, *as the case may be*) of the Passengers Act, 1855, in that, &c. (†) *or* (*as the case may be*) for a breach of the contract contained in a certain contract ticket dated , and issued by to for a passage to in the ship .

Whereupon I (*or* we) did proceed to examine into the complaint so made against the said *C. D.*, and the same having been (admitted to be

* State whether emigration officer or officer of Customs, or Government emigration agent, or passenger of the ship , as the case may be.

† Here describe briefly and in general terms the requirement (or requirements) of the Act which has not been fulfilled.

§ 85.

true by the said *C. D., or as the case may be*) fully proved to my (*or* our) satisfaction by the testimony on oath of *E. F.* (‡) a credible witness (*or* witnesses), I (*or* we) (§) [do convict him the said *C. D.* of the offence (*or* offences) aforesaid; and I (*or* we)] do adjudge and order that he shall pay to the said *A. B.* as such (emigration officer, *or* government emigration agent, *or* officer of customs, *or* passenger of the ship , *as the case may be*) the sum of £ by way of penalty (*or* by way of subsistence money, *or* of return of passage money, *or* as damages for breach of such contract as aforesaid, *as the case may be*) [(‖) and shall also pay to the said *A. B.* the further sum of £ as compensation for the loss and inconvenience occasioned to (¶) by the loss of passage in the ship].

(**) [And I (*or* we) do also adjudge and order that the licence granted to the said *C. D.* to act as a passage broker be forfeited.]

(*) [And I (*or* we) do hereby also adjudge and order that the sum of £ being a part not exceeding one moiety of the said penalty of £ be applied to compensate (†) for the wrong or damage which he (she *or* they) has *or* have sustained in this matter.]

And I (*or* we) do further adjudge and order that the said *C. D.* shall forthwith pay to the said *A. B.* the further sum of £ for the costs and charges by him the said *A. B.* incurred in the prosecution of this matter.

Given under my hand and seal (*or* our hands and seal) this day of , one thousand eight hundred and .

Signature { Justice of the peace, police, *or* stipendiary magistrate, *or* sheriff *or* steward, or sheriff *or* steward substitute, *as the case may be*, for ‡

‡ Name the witness, or witnesses if more than one.

§ Omit these words where there is no conviction, but only an order of adjudication.

‖ Insert this in cases where compensation is awarded.

¶ Name the passenger or passengers by or on whose behalf the compensation is awarded.

** Insert this where the offender is a passage broker, and his licence is declared forfeited.

* Insert this where compensation out of the penalty is awarded to any aggrieved passenger.

† Name the passenger or passengers.

‡ State county or district, &c., as the case may be.

§ State whether emigration officer, or officer of Customs, or Government emigration agent, or passenger of the ship , as the case may be.

‖ Describe briefly and in general terms the requirement (or requirements) of the Act which has not been fulfilled.

¶ Name the witness or witnesses.

FORM of CONVICTION and ORDER of ADJUDICATION where the DEFENDANT does not appear.

A. B. Complainant.
C. D. Defendant.

County, *or* city, *or* borough, *or* police district *or* stewartry of , *as the case may be.*

BE it remembered, That *C. D.* of being duly summoned to answer the complaint of *A. B.* (§) for a breach of the section (*or* sections) of the Passengers Act, 1855, in that, &c. (‖) *or* (*as the case may be*), for a breach of the contract contained in a certain contract ticket, dated and issued by to for a passage to in the ship , did not appear before me (*or* us), pursuant to the said summons. Nevertheless, I (*or* we) did proceed to examine into the complaint so preferred against the said *C. D.*, and the same having been duly proved to my (*or* our) satisfaction by the testimony on oath of *E. F.* (¶) a credible witness (*or* witnesses), I (*or* we) do, (*&c. proceed as in preceding form of conviction according to the circumstances of the case*).

86. Every police or stipendiary magistrate, and in Scotland every sheriff or steward and sheriff substitute or steward substitute of a county or stewartry within his own county or stewartry, shall have such and the like powers, privileges, and functions, and be entitled to exercise such and the like jurisdiction under this Act, as any justice or two justices, or justices at petty sessions, have or is or are entitled to exercise under the provisions of this Act; and all acts, matters, and things competent to be done under the provisions of this Act, by or before any justice or two justices of the peace, or justices at petty sessions or otherwise, may be done by and before any police or stipendiary magistrate, and in Scotland by and before any sheriff or steward or sheriff substitute or steward substitute within his own county or stewartry.

Police and stipendiary magistrate, and in Scotland sheriff, &c., to have the same powers as justices of the peace.

87. No objection shall be taken or allowed to any complaint, information, summons, or warrant under this Act, for any alleged defect therein, either in substance or in form, or for any variance between such complaint or information and the evidence adduced on the hearing thereof: but if any variance shall appear to the justice or justices present and acting at such hearing to be such that the party so summoned and appearing has been thereby deceived or misled, it shall be lawful for such justice or justices, upon such terms as he or they shall think fit, to adjourn the hearing of the case to some future day, and in the meantime to commit the defendant to such safe custody as the said justice or justices may think fit, or to discharge him upon his recognisance, with or without sureties, to appear at such time and place as may be appointed: no conviction, order, adjudication, or other proceeding under or in pursuance of this Act shall be quashed or vacated for want of form.

No objection to be allowed, nor convictions to be quashed, for want of form.

88. All penalties imposed by this Act shall, when recovered, and notwithstanding any local Act of Parliament to the contrary, be paid to the emigration officer or officer of customs at whose suit the same shall have been recovered, for the use of Her Majesty and Her successors, and if recovered in the colonies shall be paid over by the party receiving the same into the colonial treasury, and shall form part of the general revenue of the colony, and if recovered in the United Kingdom shall be paid over to the Board of Trade if the party at whose suit the same shall have been recovered be an emi-

Application of penalties.

§§ 88-91.

gration officer or his assistant, and to Her Majesty's Commissioners of Customs if the party at whose suit the same shall have been recovered be an officer of customs, to be by such Board of Trade and Commissioners of Customs respectively duly accounted for; and all such penalties as may be recovered in the United Kingdom shall be appropriated to such purposes and in such manner as the Lord High Treasurer or the Commissioners of Her Majesty's Treasury may from time to time direct and appoint: Provided always, that it shall be lawful for the justices of the peace who shall impose any such penalty at the same time to direct, if they shall think fit, that a part, not exceeding one moiety thereof, be applied to compensate any passenger for any wrong or damage which he may have sustained by the act or default in respect of which such penalty or forfeiture shall have been imposed.

Justices may award compensation out of penalties to party aggrieved.

Burden of proof to be on persons claiming exemption from Act.

89. If in any suit, action, prosecution, or other legal proceeding under this Act any question shall arise whether any ship was or was not exempted from the provisions of this Act or any of them, the burden of proving that such ship was so exempted shall lie on the party claiming the benefit of the exemption, and failing such proof it shall for any such purpose as aforesaid be taken and adjudged that the ship did come within the provisions of this Act; and it shall not be necessary, in any information, complaint, or other process or proceeding, to negative any exemption, proviso, or condition contained in any section of this Act on which such information, complaint, or other process or proceeding shall be framed, neither shall it be necessary for the complainant to prove the negative, but the defendant may prove the affirmative thereof, if he will have advantage of the same.

Proof of negatives.

Proof of a party being an emigration officer.

90. If in any proceeding before any justice or justices of the peace under this Act, or upon any action, suit, or other proceeding whatsoever, against any person, for anything done either contrary to or in pursuance of this Act, a question should arise whether any person is an emigration officer or assistant emigration officer, or an officer of customs, *viva voce* evidence may be given of such fact by the officer himself, and shall be deemed legal and sufficient evidence.

Passengers

91. Any passenger suing under this Act for any sum of

money made recoverable by this Act as passage money, subsistence money, or compensation or damages, shall not be deemed an incompetent witness in any proceeding for the recovery thereof, notwithstanding the same, if recovered, shall be applicable to his own use and benefit.

suing not incompetent witnesses.

92. No plaintiff shall recover in any action against any emigration officer, his assistant, government emigration agent, or officer of customs, or other person, for anything done in pursuance of this Act, if tender of sufficient amends shall have been made before such action brought, or if, after action brought, a sufficient sum of money shall have been paid into Court, by or on behalf of the defendant.

Tender of amends.

93. No action or suit shall be commenced against any emigration officer, his assistant, government emigration agent, officer of customs, or other person, for anything done in pursuance of or under the authority of this Act, until ten clear days' notice in writing, specifying distinctly the cause of action, has been given to the officer, agent, or person as aforesaid against whom such action or suit is intended to be brought, nor after three calendar months next after the act committed and mentioned in such notice for which such action or suit shall be so brought; and every such action shall be brought, laid, and tried where the cause of action shall have arisen, and not in any other place; and the defendant in such action or suit may plead the general issue, and give this Act and any special matter, in evidence, at any trial which shall be had thereupon; and if the matter or thing shall appear to have been done under or by virtue of this Act, or if it shall appear that such action or suit was brought before ten clear days' notice thereof given as aforesaid, or if any action or suit shall not be commenced within the time hereinbefore limited, or shall be brought or laid in any other place than as aforesaid, then the jury shall find a verdict for the defendant therein; and if a verdict shall be found for such defendant, or if the plaintiff in such action or suit shall become nonsuited, or suffer a discontinuance of such action, or if upon any demurrer in such action judgment shall be given for the defendant thereon, then and in any of the cases aforesaid such defendant shall recover full costs of suit as between solicitor and client, and shall have such remedy for recovering the same as any defendant may have for his costs in any other case by law.

Limitation of actions against officers executing the Act.

Defendant may plead the general issue, &c.

Costs.

§§ 94-96.

Limitation of legal proceedings generally.

94. Where no time is expressly limited within which any complaint or information is to be made or laid for any breach or non-performance of any of the requirements of this Act, the complaint shall be made or the information laid within twelve calendar months from the time when the matter of such complaint or information respectively arose, or in case the master of any ship is the offender or party complained against, within twelve calendar months next after his return to the country in which the matter of complaint or information arose.

Colonial Voyages.

Colonial voyages defined.

95. And whereas it is expedient to provide in certain cases for the carriage of passengers by sea from Her Majesty's possessions abroad: Be it therefore enacted as follows: For the purposes of this Act the term "colonial voyage" shall signify any voyage from any place within any of such possessions (except the territories under the government of the East India Company and the island of Hong Kong) to any place whatever, where the distance between such places shall exceed four hundred miles, or the duration of the voyage, to be prescribed as hereinafter mentioned, shall exceed three days.

This act to apply to all colonial voyages, except as relates to matters herein named.

96. This Act shall apply, so far as the same is applicable, to all ships carrying passengers on any such "colonial voyage," except as to such parts of the Act as relate to the following matters; (that is to say,)

1. To passage brokers and their licences:
2. To passengers' contract tickets:
3. To emigrant runners:
4. To the giving bond to Her Majesty:
5. To the keeping on board a copy of this Act:
6. To Orders in Council regulating emigration from the United Kingdom, or prescribing rules for promoting health, cleanliness, order, and ventilation:

If any colonial voyage be less than three weeks, this Act not to apply to subjects herein named.

Provided that if the prescribed duration of any "colonial voyage" be less than three weeks, then, in addition to the matters lastly hereinbefore excepted, the provisions of this Act shall not extend or apply, so far as they relate to the following subjects; (namely,)

The construction or thickness of the decks:

The berths and berthing:

§§
96, 97.

The height between decks :
Privies :
Hospitals :
Light and ventilation :
Manning :
Passengers' stewards :
Passengers' cooks and cooking apparatus :
The surgeon, and medicine chest :
The maintenance of passengers for forty-eight hours after arrival :

Provided also, that in the case of such "colonial voyages," whereof the prescribed duration is less than three weeks, the requirements of this Act respecting the issue of provisions shall not, except as to the issue of water, be applicable to any passenger who may have contracted to furnish his own provisions.

Governor of colonies may, by proclamation, declare length of voyage, and prescribe scale of diet, medicines, and medical comforts.

97. It shall be lawful for the governor of each of Her Majesty's possessions abroad, by any proclamation to be by him from time to time issued for that purpose (which shall take effect from the issuing thereof), to declare what shall be deemed for the purposes of this Act to be the length of the voyage of any ship carrying passengers from such possession to any other place whatsoever, and to prescribe such scale of diet for the use of the passengers during the voyage as he shall think proper, and also to declare what medicines, medical comforts, medical instruments, and other matters shall be deemed necessary for the medical treatment of the passengers during such "colonial voyage;" and the provisions and requirements of every such proclamation shall be enforced in all Her Majesty's dominions as if they were incorporated in this Act, and in like manner as the provisions of this Act may be enforced; and a copy of any such proclamation, purporting to be under the hand of the governor of the colony, wherein the same may have been issued, and under the public seal of such colony, shall in any part of Her Majesty's dominions wherein the same shall be produced be received as good and sufficient evidence of the due issuing and of the contents of such proclamation, unless it shall be proved that such copy is not genuine.

Copies of proclamations to be received as evidence.

§§ 98, 99.

Provision for survey of ship in the colonies, and for appointing surgeon thereto.

98. It shall be lawful for the governors of any such possessions respectively to authorise such person or persons as they may think fit to make the like survey and examination of "passenger ships" sailing from such possessions respectively as is hereinbefore required to be made by two or more competent surveyors in respect of "passenger ships" sailing from the United Kingdom, and also to authorise in such cases, as to such governors may seem proper, any competent person to act as medical practitioner on board any "passenger ship" proceeding on a "colonial voyage."

India.

Power to the Governor-General of India in Council by any Act to be passed for that purpose, to adopt this Act for India, and to make rules respecting food, passengers, surgeons, &c.;

99. This Act shall not apply to any of the territories or places under the government of the East India Company: It shall, however, be lawful for the Governor-General of India in Council, from time to time, by any Act or Acts to be passed for that purpose, to declare that this Act or any part thereof shall apply to the carriage of passengers upon any voyage from any ports or places within such territories, to be specified in such Act or Acts, to any other places whatsoever, to be also specified in such Act or Acts; and also in like manner to authorise the substitution, as respects such voyages of other articles of food and provisions for those hereinbefore enumerated; and to declare the rule of computation by which the length of any such voyage shall be estimated; and to determine the persons or officers who in such territories shall be entitled to exercise or perform the powers, functions, or duties hereinbefore given to or imposed upon the emigration officers and officers of customs in the United Kingdom; and to authorise the employment on board any ship of a medical practitioner duly qualified by law to practise as a physician, surgeon, or apothecary within such territories; and to declare for the purposes of this Act the space necessary for passengers, and the age at which two children shall be considered equal to one statute adult, in ships that may clear out from any port or place within such territories; and also to declare in what manner, and before what authorities, and by what form of proceedings, the penalties imposed and the sums of money made recoverable by this Act shall be sued for and recovered within such territories, and to what uses such penalties shall

and to declare in what manner penalties &c., may be sued for and recovered.

be applied: And on the passing of such Indian Act or Acts, and whilst the same shall remain in force, all such parts of this Act as shall be adopted therein shall apply to and extend to the carriage of passengers upon such voyages as in the said Indian Act or Acts shall be specified. The provisions of such Indian Act shall be enforced in all Her Majesty's possessions in like manner as the provisions of this Act may be enforced: Every such Indian Act shall be subject to disallowance and repeal, and shall in the same manner be transmitted to England, to be laid before both houses of parliament, as in the case of any other law made by the Governor-General in Council.

Indian Act may be enforced in the colonies in like manner as this Act.

Voyages to the United Kingdom.

100. The master of every ship bringing passengers into the United Kingdom from any place out of Europe, and not within the Mediterranean Sea, shall within twenty-four hours after arrival deliver to the emigration officer or his assistant, or in their absence to the chief officer of customs at the port of arrival, a correct list, signed by such master, and specifying the names, ages, and callings of all the passengers embarked, and also the port or ports at which they respectively may have embarked, and showing which, if any of them, may have died, with the supposed cause of death, or been born on the voyage; and if any master shall fail so to deliver such list, or if the same shall be wilfully false, he shall, on conviction, as hereinbefore mentioned, be liable to a penalty not exceeding 50*l.*

List of passengers brought into the United Kingdom to be delivered by the master of the ship to the emigration officer. Penalty for neglect.

The rest of this section, relating to the returns of births and deaths at sea, is repealed by the "Births and Deaths Registration Act, 1874" (37 & 38 Vict. c. 88, s. 54). For the provisions of this latter Act, relating to births and deaths at sea, now in force, see the "Merchant Shipping Act, 1854," under s. 274, p. 234.

101. If any ship bringing passengers into the United Kingdom from any place out of Europe shall have on board a greater number of passengers or persons than in the proportions respectively prescribed in the fourteenth section of this Act for ships carrying passengers from the United Kingdom, the master of such ship shall be liable, on such conviction as hereinbefore mentioned, to a penalty not exceeding 10*l.* nor

Penalty on masters for having on board a greater number of persons than that prescribed by section 14 of this Act.

§§ 101-103.

less than 5*l.* for each such person or statute adult constituting any such excess.

Provisions and water to be issued to passengers brought into the United Kingdom the same as in ships carrying passengers from the United Kingdom.

102. The master of every passenger ship bringing passengers into the United Kingdom from any place out of Europe shall make to each statute adult during the voyage, including the time of detention, if any, at any port or place before the termination thereof, issues of pure water and of good and wholesome provisions in a sweet condition, in quantities not less in amount than is prescribed in the thirty-fifth section of this Act for passengers proceeding from the United Kingdom; and in case of non-compliance with any of the requirements of this section, the master of such ship shall, on such conviction as hereinbefore mentioned, be liable for each offence to a penalty not exceeding 50*l.*

Penalty for default. Schedules to be part of the Act.

103. The Schedules to this Act shall be deemed to be part of this Act, and all the directions therein contained shall be duly followed and enforced, under a penalty not exceeding 10*l.* on the person failing to obey the same respectively.

END OF THE PASSENGERS ACTS.

APPENDIX.

THE MERCHANT SHIPPING ACT, 1876.

General Rules for Courts of Survey in the United Kingdom, 1876.

Whereas, by the Merchant Shipping Act, 1876, it is provided that the owner or master of a ship, that has been provisionally detained, may appeal to the Court of Survey for the port or district where the ship is detained:

And whereas it is further provided that every Court of Survey shall consist of a Judge sitting with two Assessors; and that the Judge of the Court shall be summoned from a list of persons from time to time approved for the port or district by one of Her Majesty's Principal Secretaries of State:

And whereas it is provided that the Lord Chancellor of Great Britain, may from time to time (with the consent of the Treasury so far as relates to fees) make general rules to carry into effect the provisions of the said Act with respect to Courts of Survey:

Now, therefore, I, the Right Honourable Hugh MacCalmont, Baron Cairns, Lord High Chancellor of Great Britain, with the consent so far as may be necessary of one of Her Majesty's Principal Secretaries of State, and of the Treasury so far as relates to fees, do order as follows:

Short Title.

1. These Rules may be cited as "The Rules of the Court of Survey, 1876."

Commencement.

2. These Rules shall come into operation on the 1st day of October, 1876.

Interpretation.

3. In the construction of these Rules, words importing the singular number shall include the plural, and words importing the plural number shall include the singular number.

Courts of Survey, their Districts and Officers.

4. The Courts of Survey, with the districts assigned to each, and the persons authorized to act as Judges and Registrars thereof, and which have been approved by one of Her Majesty's Principal Secretaries of State, as set forth in Appendix A, shall be the Courts of Survey, and the Districts, Judges, and Registrars of such Courts, for the purposes of the Merchant Shipping Acts, 1854 to 1876.

Publication of Rules.

5. These Rules shall be published by Her Majesty's Stationery Office through its agents, and a copy shall be kept at the office of the Registrar of every Court of Survey and at every Custom-house and Mercantile Marine Office in the United Kingdom, and may be perused thereat by the master or owner of any ship which may be provisionally detained under the Merchant Shipping Act, 1876, and by any one deputed by him.

Publication of the Name of Registrar and of his Office.

6. A notice shall be put up in some conspicuous place in every Custom-house and Mercantile Marine Office in the United Kingdom, containing the name of the Registrar of the Court of Survey for that district, and the name of the street or place in which such Registrar's office is situated.

Notice of Appeal.

7. Where the owner or master of a ship, hereinafter called the Appellant, desires to appeal to a Court of Survey, he shall file at the office of the Registrar of the Court of Survey for the London District, or for the district in which the ship is, hereinafter called the Court, a notice in the Form No. 1 in Appendix B.

Summoning of Court.

8. Immediately upon the filing of the notice of appeal, the Registrar shall communicate the fact, by telegraph and letter, to the Board of Trade, who shall thereupon inform him whether they intend to have the appeal heard by a Wreck Commissioner, and, if so, on what day.

9. If the Board of Trade inform him that they do not intend to have the appeal heard by a Wreck Commissioner, the Registrar shall forthwith ascertain which of the other Judges of the Court will hear the appeal, and on what day.

10. On ascertaining when the hearing will take place, the Registrar shall, if there is a list of Assessors for the Court, select therefrom the person who is, in his opinion, the best qualified to act as Assessor on the appeal; or if there is no such list, he will take the instructions of the Judge as to the Assessor to be appointed.

11. The Board of Trade shall appoint the other Assessor, and

shall forthwith send the name and address of such Assessor to the Registrar.

12. If the ship is a foreign ship, the Registrar shall give notice to the Consular Officer for the State to which the ship belongs, residing at or nearest to the place where the ship is detained, that, at the request of the Appellant, some competent person will be selected by the Consular Officer to act as Assessor.

13. As soon as the Registrar has ascertained by whom the appeal will be heard, he shall summon the Court in the Form No. 2 in Appendix B. He shall at the same time send notice thereof to the Board of Trade and to the Appellant, in the Form No. 3 in Appendix B.

14. If the survey has been made on the complaint of any person, hereinafter called the Complainant, the Board of Trade shall send to him notice of the time and place appointed for the hearing.

15. Previous to the hearing the Board of Trade shall forward to the Registrar, to be produced as evidence at the hearing, an official copy of the report of the surveyor.

16. The Court shall, if practicable, be summoned to hear the appeal on a day not later than fourteen days from the filing of the notice of appeal.

Parties.

17. The Board of Trade and the Appellant shall be parties to the proceedings.

18. Any other person, on entering an appearance, may, by permission of the Judge, be made a party to the proceedings.

Notice to produce.

19. Either party may give to the other a notice in writing to produce such documents (saving all just exceptions) as relate to any matters in difference, and which are in the possession or control of such other party; and if such notice be not complied with, secondary evidence of the contents of the said documents may be given by or on behalf of the party who gave such notice.

Notice to admit.

20. Either party may give to the other party a notice in writing to admit any documents (saving all just exceptions); and in case of neglect or refusal to admit after such notice, the party so neglecting or refusing shall be liable for all the costs of proving such documents, whatever the result may be, unless the Court is of opinion that the refusal to admit was reasonable; and no costs of proving any document shall be allowed unless such notice be given, except where the omission to give the notice is, in the opinion of the officer by whom the costs are taxed, a saving of expense.

Witnesses.

21. The Wreck Commissioner shall have power to issue subpœnas as nearly as may be in the form used in the High Court of Justice, and such subpœnas shall have effect, and may be served in any part of the United Kingdom.

Affidavits.

22. Affidavits may, by permission of the Judge, be used at the hearing, when sworn to in any of the following ways, viz. :

In the United Kingdom, before any Judge or Registrar of a Court of Survey, or before a person authorised to administer oaths in the Supreme Court of Judicature, or before a Commissioner empowered to take or receive affidavits, or before a Justice of the Peace for the county or place where it is sworn or made.

In any place in the British dominions out of the United Kingdom, before any Court, Judge, or Justice of the Peace, or any person authorised to administer oaths there in any Court.

In any place out of the British dominions, before a British Minister, Consul, Vice-Consul, or Notary Public, or before a Judge or Magistrate, his signature being authenticated by the official seal of the Court to which such Judge or Magistrate is attached.

Proceedings in Court.

23. At the hearing, the Board of Trade shall first call their witnesses, and having done so, shall state in writing, what order they require the Court to make.

24. The Complainant, if he has appeared, shall then call his witnesses, and having done so, shall state in writing, what order he requires the Court to make.

25. The Appellant shall then call his witnesses, and having done so, shall state in writing, what order he requires the Court to make.

26. After the Appellant has examined all his witnesses, the Board of Trade and the Complainant may, on cause shown to the satisfaction of the Judge, call further witnesses in reply.

27. After all the witnesses have been examined, the Court shall first hear the Appellant, then the Complainant (if any), and afterwards the Board of Trade.

28. The Judge may adjourn the Court from time to time and from place to place, as may be most convenient.

29. The Judge may deliver the decision of the Court either vivâ voce or in writing ; and, if in writing, it may be sent or delivered to the respective parties, and it shall not be necessary to hold a Court merely for the purpose of giving the decision.

30. As soon as possible after the Court has come to its decision, the Judge shall issue an order for the release or detention (either finally or on condition) of the vessel in the Form No. 4 in Appendix B.

31. The Judge shall report to the Board of Trade in the Form No. 5 in Appendix B.

Costs and Damages.

32. The Court may, if the parties consent thereto in writing, decide, whether costs or costs and damages are due, and to and from whom, and may assess the amount thereof; or the parties may, by consent in writing, refer the question to the Wreck Commissioner.

33. The order for the payment of costs, or of costs and damages, shall be in the Form No. 6 in Appendix B.

Computation of Time.

34. In computing the number of days within which any act is to be done, the same shall be reckoned exclusive of the first day and inclusive of the last day, unless the last day shall happen to fall on a Sunday, Christmas Day, or Good Friday, or on a day appointed for a Public Fast or Thanksgiving, in which case the time shall be reckoned exclusive of that day also.

35. The days between Thursday next before and the Wednesday next after Easter Day and Christmas Day, and the three following days, shall not be reckoned or included in the computation.

Service of Notices, &c.

36. Any notice, summons, or other document issuing out of the Court may be served by post.

37. The service of any notice, summons, or other document may be proved by the oath or affidavit of the person by whom it was served.

Table of Fees.

38. The Fees, a table whereof is in Appendix C, shall be demanded and taken in any proceedings before a Court of Survey.

Dated this 29th day of September, 1876.

CAIRNS, C.

APPENDIX A.

LISTS of the COURTS OF SURVEY, with the Districts assigned to each, and the persons authorised to act as Judges and Registrars thereof, approved by one of Her Majesty's Principal Secretaries of State.

In the following Lists, Column No. 1 contains the names of all the Courts of Survey in the United Kingdom.

Districts.

The district of the Court of Survey for London, shall include the City of London, and the districts of all the Metropolitan County Courts, the districts of the County Court of Kent holden at Gravesend, Dartford, Greenwich, and Woolwich, the districts of the County Court of Essex, holden at Brentwood and Romford, and the district of the County Court of Surrey holden at Wandsworth.

The district of any other Court of Survey in England shall be the district of the County Court of the place, at which the Court of Survey is held.

The district of a Court of Survey in Scotland and in Ireland shall be the district of the Port of Customs of the place, at which the Court is held.

The Courts shall be held at the places, whose names they bear, or at any place within their respective districts, and may, by the permission of the Judge, be adjourned to any place out of such distric

Judges.

The Wreck Commissioner shall be a Judge of every Court o Survey in the United Kingdom.

The persons whose official titles are set out in Column No. 2, shall be the other Judges of the Courts of Survey at the places opposite to which their names occur.

Registrars.

The Registrar of the Court of Survey for London shall be Mr. William Edward Stanley Thomson, and his office shall be at Somerset House, Strand, in the county of Middlesex.

The Registrar of any other Court of Survey in England shall be the Registrar of the County Court of the place at which the Court of Survey is held, and his office shall be the office of the Registrar of the said County Court.

The Registrar of a Court of Survey in Scotland shall be the Sheriff Clerk of the County in which the Court is held, and his office shall be the office of the said Sheriff clerk.

The Registrar of a Court of Survey in Ireland shall be the Clerk of the Peace, or Registrar or other person discharging the duties of Registrar of the Court of the Chairman of the county, in which the Court is held, and his office shall be the office of the Clerk of the Peace, Registrar, or other person aforesaid.

List No. 1.

COURTS OF SURVEY IN ENGLAND.

Column No. 1. Court of Survey for	Column No. 2. Judges of the Courts of Survey at the places opposite to which their Names occur.
Berwick Belford Alnwick Morpeth	The Judges of the County Courts in Circuits 1 and 2. The Recorder of Berwick.
North Shields Newcastle Gateshead South Shields Sunderland Seaham Harbour	The Judges of the County Courts in Circuits 1 and 2. The Stipendiary Magistrate at South Shields. The Recorders of Durham and Newcastle.
Hartlepool Stockton	The Judges of the County Courts in Circuits 2 and 15. The Stipendiary Magistrate at Middlesborough. The Recorder of Hartlepool.
Stokesley Whitby Scarborough Bridlington Beverley Hedon Hull	The Judge of the County Court in Circuit 16. The Stipendiary Magistrate at Hull. The Recorders of Hull and Scarborough.
Goole	The Judges of the County Courts in Circuits 16 and 18.
Barton-on-Humber Great Grimsby Louth Spilsby Boston	The Judge of the County Courts in Circuit 17.
Spalding Holbeach Wisbeach	The Judge of the County Courts in Circuits 17, 32, and 35.
King's Lynn Little Walsingham Holt North Walsham	The Judge of the County Courts in Circuit 32. The Recorder of King's Lynn.
Yarmouth Lowestoft	The Judge of the County Courts in Circuits 32 and 33. The Recorders of Oxford, Norwich, and Yarmouth.
Halesworth Framlingham Woodbridge	The Judge of the County Courts in Circuit 33. The Recorders of Aldborough and Oxford.
Ipswich Harwich	The Judge of the County Courts in Circuits 33 and 38. The Recorder of Ipswich.
Colchester Maldon Rochford	The Judge of the County Courts in Circuit 38. The Recorders of Colchester and Maldon.
London	The Magistrates of the Metropolitan Police Courts.
Rochester Sheerness Sittingbourne Faversham	The Judge of the County Courts in Circuit 48. The Stipendiary Magistrate at Sheerness. The Recorders of Faversham and Rochester.

COURTS OF SURVEY IN ENGLAND—*continued.*

Column No. 1. Court of Survey for	Column No. 2. Judges of the Courts of Survey at the places opposite to which their Names occur.
Canterbury.	The Judges of the County Courts in Circuits 48 and 49. The Judge of the Admiralty Court of the Cinque Ports. The Recorders of Canterbury, Deal, Dover, Folkestone, Hythe, Margate, Sandwich, and Tenterden.
Margate.	
Ramsgate.	
Sandwich.	
Deal.	
Dover.	
Folkestone.	
Hythe.	
Romney.	
Rye.	The Judge of the County Courts in Circuit 50. The Judge of the Admiralty Court of the Cinque Ports. The Recorder of Rye.
Hastings.	
Lewes.	The Judges of the County Courts in Circuits 50 and 51. The Stipendiary Magistrate at Brighton. The Recorders of Brighton and Seaford.
Brighton.	
Worthing.	
Arundel.	The Judge of the County Courts in Circuits 50 and 51. The Recorders of Chichester, Portsmouth, and Winchester.
Chichester.	
Portsmouth.	
Southampton.	The Judges of the County Courts in Circuits 51 and 55. The Recorders of Poole, Southampton, Wareham, and Winchester.
Newport, Isle of Wight.	
Christchurch.	
Poole.	
Wareham.	
Weymouth.	The Judge of the County Courts in Circuit 55.
Bridport.	
Axminster.	The Judge of the County Courts in Circuits 57 and 58. The Recorder of Exeter.
Honiton.	
Exeter.	
Newton Abbott.	
Totnes.	The Judge of the County Courts in Circuit 58. The Recorder of Dartmouth. The Judges of the County Courts in Circuits 58 and 59. The Recorders of Devonport, Plymouth, and Tiverton.
Kingsbridge.	
East Stonehouse.	
Liskeard.	
Saint Austell.	The Judge of the County Courts in Circuit 59. The Recorders of Falmouth, Helston, and Penzance.
Truro.	
Falmouth.	
Helston.	
Penzance.	
Redruth.	
Bodmin.	
Camelford.	
Holsworthy.	
Bideford.	The Judge of the County Courts in Circuit 57. The Recorders of Barnstaple and Bideford.
Barnstaple.	
Williton.	
Bridgewater.	The Judges of the County Courts in Circuits 54 and 57. The Recorders of Bristol and [illegible]
Weston-super-Mare.	
Wells.	
Bristol.	

COURTS OF SURVEY IN ENGLAND—*continued.*

Column No. 1. Court of Survey for	Column No. 2. Judges of the Courts of Survey at the places opposite to which their names occur.
Thornbury	The Judges of the County Courts in Circuits 53 and 54.
Dursley	
Gloucester	The Judges of the County Courts in Circuits 24 and 54.
Newnham	The Recorder of Gloucester.
Chepstow	
Newport(Monmouth)	The Judges of the County Courts in Circuits 24, 30, and 31.
Cardiff	The Stipendiary Magistrates at Cardiff and Swansea.
Bridgend	
Neath	
Swansea	
Llanelly	The Judge of the County Courts in Circuit 31.
Carmarthen	The Recorder of Carmarthen.
Narberth	
Pembroke	
Haverfordwest	
Cardigan	
Aberayron	
Aberystwith	The Judge of the County Courts in Circuit 28.
Machynlleth	
Dolgelly	
Portmadoc	
Pwllheli	
Carnarvon	
Llangefni	The Judges of the County Courts in Circuit 29.
Bangor	The Recorder of Chester.
Conway	
St. Asaph	
Holywell	
Chester	
Runcorn	The Judges of the County Courts in Circuits 6 and 7.
Birkenhead	The Stipendiary Magistrate at Liverpool.
Liverpool	The Stipendiary Magistrate at Birkenhead.
	Judge of Court of Passage.
	The Recorder of Liverpool.
Ormskirk	The Judges of the County Court in Circuit 6.
Preston	The Judge of the County Courts in Circuit 4.
Kirkham	The Recorder of Preston.
Paulton-le-Fylde	
Lancaster	
Ulverston	
Whitehaven	The Judge of the County Courts in Circuit 3.
Cockermouth	The Recorder of Carlisle.
Wigton	
Carlisle	

LIST No. 2.

COURTS OF SURVEY IN SCOTLAND.

Column No. 1. Court of Survey for	Column No. 2. Judges of the Courts of Survey at the places opposite to which their Names occur.
Leith	Sheriff and Sheriff Substitutes of Midlothian, Haddington, and Linlithgow.
Granton	Sheriff and Sheriff Substitutes of Midlothian, Haddington, and Linlithgow.
Borrowstoness	Sheriff and Sheriff Substitutes of Linlithgow and Stirling.
Grangemouth	Sheriff and Sheriff Substitutes of Linlithgow and Stirling.
Alloa	Sheriff and Sheriff Substitutes of Stirling, Clackmannan, and Perthshire.
Kirkcaldy	Sheriff and Sheriff Substitutes of Fifeshire and Perthshire.
Dundee	Sheriff and Sheriff Substitutes of Perthshire, Forfarshire, and Kincardine.
Arbroath	Sheriff and Sheriff Substitutes of Perthshire, Forfarshire, and Kincardine.
Montrose	Sheriff and Sheriff Substitutes of Perthshire, Forfarshire, and Kincardine.
Aberdeen	Sheriff and Sheriff Substitutes of Aberdeenshire and Kincardine
Peterhead	Sheriff and Sheriff Substitutes of Kincardine, Banffshire, and Aberdeenshire.
Banff	Sheriff and Sheriff Substitutes of Aberdeenshire, Banffshire, and Elgin.
Inverness	Sheriff and Sheriff Substitutes of Nairn, Invernessshire, and Ross.
Wick	Sheriff and Sheriff Substitutes of Caithness and Sutherland.
Campbelton	Sheriff and Sheriff Substitutes of Argyleshire.
Glasgow	Sheriff and Sheriff Substitutes of Lanarkshire, Renfrewshire, and Dumbarton.
Greenock	Sheriff and Sheriff Substitutes of Lanarkshire, Renfrewshire, and Ayrshire.
Ardrossan	Sheriff and Sheriff Substitutes of Renfrew and Ayrshire.
Ayr	Sheriff and Sheriff Substitutes of Ayrshire, Renfrewshire, and Wigtownshire.
Stranraer	Sheriff and Sheriff Substitutes of Ayrshire, Wigtown, and Kirkcudbright.
Wigtown	Sheriff and Sheriff Substitutes of Ayrshire, Wigtown, and Kirkcudbright.
Dumfries	Sheriff and Sheriff Substitutes of Dumfries and Kirkcudbright.

LIST No. 3.

COURTS OF SURVEY IN IRELAND.

Column No. 1. Court of Survey for	Column No. 2. Judges of the Courts of Survey at the places opposite to which their Names occur.
Dublin	The Recorder of Dublin. Resident Magistrates and Chairman of Quarter Session for county Dublin.
Drogheda	Resident Magistrates and Chairmen of the counties of Louth and Meath.
Dundalk	Resident Magistrates and Chairman of county of Louth.
Newry	Resident Magistrates and Chairmen of counties of Armagh and Down.
Belfast	The Recorder of Belfast. Resident Magistrates and Chairman of Quarter Sessions for county of Antrim.
Coleraine	Resident Magistrates and Chairman of county of Londonderry.
Londonderry	The Recorder of Londonderry. Resident Magistrates and Chairman of Quarter Sessions for county of Londonderry.
Sligo	Resident Magistrates and Chairman of county of Sligo.
Ballina	Chairman of Quarter Sessions of county Mayo. Resident Magistrate.
Westport	Chairman of county Mayo.
Galway	The Recorder of Galway, Resident Magistrates and Chairman of county Galway.
Limerick	Resident Magistrates, Chairman of counties Clare and Limerick.
Tralee	Chairman of county Kerry.
Skibbereen	Chairman of county Cork.
Cork	The Recorder of Cork, Resident Magistrates, and Chairman of Quarter Sessions.
Youghal	Chairman of county Cork.
Waterford	Resident Magistrates, Chairman of county Waterford.
New Ross	Chairman of counties Wexford and Kilkenny.
Wexford	Resident Magistrate, Chairman of county Wexford.

APPENDIX B.

The following forms shall be employed, as far as possible, with such alterations as circumstances may require, but no deviation from the prescribed forms shall invalidate the proceedings, unless the Judge shall be of opinion that the deviation was material.

No. 1.—Notice of Appeal.

The Merchant Shipping Acts, 1854 to 1876.

In the matter of the ship *Marian.*

To the Registrar of the Court of Survey for .

Take notice that I [*name and address*] the master [*or* managing owner *or* owner of shares] of the ship of the port of do appeal

(1) from the report of *L.M.*, the Surveyor appointed by the Board of Trade to survey the said ship.

or (2) from a declaration given by a shipwright surveyor *or* engineer, (*or* from the refusal of a shipwright surveyor *or* engineer to give a declaration,) under the provisions of section 309 of the Merchant Shipping Act, 1854.

or (3) from the refusal of an emigration officer (*or as the case may be*) to give a certificate of clearance under sections 11 and 50 of the Passengers Act, 1855.

or (4) from the refusal of appointed by the Board of Trade under the provisions of section 30 of the Merchant Shipping Act Amendment Act, 1862, to give a certificate that the said ship is properly provided with lights and with the means of making fog signals.

The address at which all notices and documents may be served by post or otherwise on me is

Dated this day of .

(*To be signed by the appellant.*)

No. 2.—Summons to Court.

The Merchant Shipping Acts, 1854 to 1876.

The Court of Survey for .

In the matter of an Appeal by from the report of *L.M.*, the Surveyor appointed by the Board to survey the *Marian* [*or as the case may be*].

In pursuance of the Merchant Shipping Act, 1876, I hereby summon you to attend as Judge [*or* Assessor] on this appeal, at on the day of at the hour of in the noon.

Dated this day of 187 .

Registrar.

I will attend as summoned.

Signature of person summoned.

No. 3.—Notice of Sitting of Court of Survey.

The Merchant Shipping Acts, 1854 to 1876.

The Court of Survey for .

In the matter of an Appeal by from the report of *L.M.*, the Surveyor appointed by the Board of Trade to survey the *Marian* [*or as the case may be*].

To *A.B.*, the master [*or* managing owner, *or* owner of shares] of the ship the appellant [*or* the Board of Trade].

Take notice that the Court of Survey will meet at on the day of 187 at o'clock in the noon, to hear the appeal in the above matter.

Dated this day of 187 .

Registrar.

No. 4.—Order of Court for Release or Detention of Ship.

The Merchant Shipping Acts, 1854 to 1876.

The Court of Survey for .

In the matter of an Appeal by from the report of *L.M.*, the Surveyor appointed by the Board of Trade to survey the *Marian* [*or as the case may be*].

I do, with the concurrence of , order the said ship to be released *or* detained [finally *or* conditionally upon].

Given under my hand this day of 18 .

Judge.

We [*or* I] concur in the above report.

Assessor.

Assessor.

No. 5.—Report of Judge of Court of Survey.

The Merchant Shipping Acts, 1854 to 1876.

The Court of Survey for .

In the matter of an Appeal by from the report of *L.M.*, the Surveyor appointed by the Board of Trade to survey the *Marian* [*or as the case may be*].

I do report that, having heard this appeal, I did, with the concurrence of order the said ship to be released *or* detained [finally *or* conditionally upon] for the reasons set forth in the annexed statement.

I am also of opinion that the costs of this appeal should be paid by *A.B.* to the Solicitor of the Board of Trade [*or* by the Solicitor to the Board of Trade to *A.B.*; *or* that all parties shall pay their own costs].

Dated this day of 18 .

Judge.

We [*or* I] concur in the above report.

Assessor.

Assessor.

No. 6.—Order for Payment of Costs, or of Costs and Damages.

The Merchant Shipping Acts, 1854 to 1876.

The Court of Survey for .

In the matter of an Appeal by from .

[The parties to this appeal having, by agreement in writing, consented to refer the question whether any costs or costs and damages are due, and to and from whom, to me *or* us, with liberty to assess the amount thereof], I order

(1) That the Board of Trade do pay to the appellant the sum of for the costs [*or* the costs and damages] incurred by reason of such detention and survey.

or (2) that the appellant do pay to the Solicitor of the Board of Trade the sum of for the costs incurred by reason of the detention and survey of the said ship.

or (3) that each party pays his own costs.

Given under my hand this day of 18 .

Judge.

We [*or* I] concur in the above order.

Assessor.

Assessor.

APPENDIX C.

	£	s.	d.
On filing notice of appeal, for every 50 tons of the gross registered tonnage of the ship	0	10	0
On filing every affidavit	0	2	6

	£	s.	d.
On entering appearance	0	10	0
On every subpœna	0	2	6
On every statement of the order required to be made by the Court	0	10	0
On the production and swearing of every witness	0	2	6
On every consent by the parties to refer the question of costs, or of costs and damages, to the Court or Judge, to be paid by each party	0	10	0
On every hearing, for each day, to be paid by each party, the amount thereof to be at the discretion of the Judge — from	1	0	0
— to	5	0	0
On every order whether for the release or detention of the ship or for payment of costs, or costs and damages, to be paid by the party taking out the order	1	0	0
On every office copy of the Judge's judgment or report, of the shorthand writer's notes of the evidence, or of any of the proceedings in the appeal, per folio of 72 words	0	0	6

THE MERCHANT SHIPPING ACTS, 1854 TO 1876.

General Rules for Formal Investigations into Shipping Casualties, 1876.

WHEREAS by the Merchant Shipping Act, 1876, it is provided that the Lord High Chancellor of Great Britain may from time to time make general rules for carrying into effect the enactments relating to formal investigations into shipping casualties:

Now, therefore, I, the Right Honourable Hugh MacCalmont, Baron Cairns, Lord High Chancellor of Great Britain, do order as follows:

Short Title.

1. These Rules may be cited as "The Shipping Casualties Rules, 1876."

Commencement.

2. These Rules shall come into operation on the 1st day of October, 1876.

Interpretation.

3. In the construction of these Rules words importing the singular number shall include the plural, and words importing the plural number shall include the singular number; and the words "shipping casualty" shall have and include the meaning given to them in the Merchant Shipping Act, 1876; and the word "Judge" shall mean the authority by whom any formal investigation into a shipping casualty is held.

Publication of Rules.

4. These Rules shall be published by Her Majesty's Stationery Office through its agents, and a copy shall be kept at every Custom-house and Mercantile Marine Office in the United Kingdom, and may be perused thereat by the master or owner of any ship, and by any person deputed by him.

Notice of holding Investigation.

5. When the Board of Trade has directed that a formal investigation into a shipping casualty shall take place, they shall cause a notice to be served upon the master and upon the certificated officers of the ship who were on board at the time of the happening of the casualty, in the Form No. 1 in the Appendix.

6. The Board of Trade may, if they think fit, cause a notice of the investigation to be served upon the owner, and also upon any other person who appears to have been in any way responsible for the casualty.

Parties.

7. The Board of Trade, and the Defendant, hereinafter referred to, shall be parties to the proceedings.

8. Any person, having any interest in the investigation, shall, on filing an affidavit showing the nature of his interest, have a right to appear, and shall thereupon become a party to the proceedings.

9. Any other person may, by permission of the Judge, appear, and shall thereupon become a party to the proceedings.

Notice to Produce.

10. Either party may give to the other a notice in writing to produce such documents (saving all just exceptions) as relate to any matters in difference, and which are in the possession or control of such other party; and if such notice be not complied with, secondary evidence of the contents of the said documents may be given by or on behalf of the party who gave such notice.

Notice to Admit.

11. Either party may give to the other party a notice in writing to admit any documents (saving all just exceptions); and in case of neglect or refusal to admit after such notice, the party so neglecting or refusing shall be liable for all the costs of proving such documents, whatever the result may be, unless the Court is of opinion that the refusal to admit was reasonable; and no costs of proving any document shall be allowed unless such notice be given, except where the omission to give the notice is, in the opinion of the officer by whom the costs are taxed, a saving of expense.

Witnesses.

12. The Wreck Commissioner shall have power to issue subpœnas as nearly as may be in the form used in the High Court of Justice, and such subpœnas shall have effect, and may be served in any part of the United Kingdom.

Affidavits.

13. Affidavits may, by permission of the Judge, be used as evidence at the hearing, when sworn to in any of the following ways, viz. :—

In the United Kingdom, before the Judge, or before a person authorized to administer oaths in the Supreme Court of Judicature, or before a Justice of the Peace for the county or place where it is sworn or made.

In any place in the British dominions out of the United Kingdom, before any Court, Judge, or Justice of the Peace, or any person authorized to administer oaths there in any Court.

In any place out of the British dominions, before a British Minister, Consul, Vice-Consul, or Notary Public, or before a Judge or Magistrate, his signature being authenticated by the official seal of the Court to which such Judge or Magistrate is attached.

Proceedings in Court.

14. The proceedings shall commence with the examination of the master, officers, and any other person who was on board at the happening of the casualty, and who can give material evidence in regard thereto.

15. On the completion of their examination, the Board of Trade shall state, in writing, whether they have any, and if so, what charge to make against any person, and against whom.

16. Where the person against whom a charge is made, in these Rules called the Defendant, is in Court, or before the Court, the Board of Trade may make him a party to the proceedings by handing to him a copy of the charge.

17. Where the Defendant is not in Court, or before the Court, the Judge may, on the application of the Board of Trade, cause a summons to be served upon him in the Form No. 2 in the Appendix.

18. When the Defendant has become a party to the proceedings, or when the time allowed for his appearance has expired, and he has not appeared, the Board of Trade shall produce any further witnesses whom they may wish to examine.

19. The Defendant shall then produce any witnesses whom he may wish to examine.

20. The Judge may then allow any further witnesses to be examined before him.

21. When the evidence is concluded, the Defendant, and any par-

ties who may have appeared, shall first be heard, and afterwards the Board of Trade.

22. The Judge may adjourn the Court from time to time and from place to place, as may be most convenient.

23. The Judge may deliver the decision of the Court either vivâ voce or in writing; and, if in writing, it may be sent or delivered to the respective parties, and it shall not be necessary to hold a Court merely for the purpose of giving the decision.

24. If, however, the Judge decides that the certificate of any officer is to be cancelled or suspended, he shall give his decision in open Court.

25. The Judge may, if he thinks fit, order the costs and expenses of the proceedings, or any part thereof, to be paid by the Board of Trade, or by the parties to the proceedings, or by any one or more of them, in the Form No. 3 in the Appendix.

26. The Judge shall report to the Board of Trade in the Form No. 4 in the Appendix.

Computation of Time.

27. In computing the number of days within which any act is to be done, the same shall be reckoned exclusive of the first day and inclusive of the last day, unless the last day shall happen to fall on a Sunday, Christmas Day, or Good Friday, or on a day appointed for a Public Fast or Thanksgiving, in which case the time shall be reckoned exclusive of that day also.

28. The days between Thursday next before and the Wednesday next after Easter Day and Christmas Day, and the three following days, shall not be reckoned or included in the computation.

Service of Notices, &c.

29. Any notice, summons, or other document issuing out of the Court may be served by post.

30. The service of any notice, summons, or other document may be proved by the oath or affidavit of the person by whom it was served.

Dated this 29th day of September, 1876.

Cairns, C.

APPENDIX.

The following forms shall be employed, as far as possible, with such alterations as circumstances may require, but no deviation from the prescribed forms shall invalidate the proceedings, unless the Judge shall be of opinion that the deviation was material.

No. 1.—Notice of holding a formal Investigation.

The Merchant Shipping Acts, 1854 to 1876.

To Master, Mate, Engineer, *or* Owner of the British steam [*or* sailing] ship of .

In pursuance of the provisions of section 23 of the Merchant Shipping Act Amendment Act, 1862, I hereby give you notice that the Board of Trade have ordered a formal investigation to be held into the circumstances attending the
and that subjoined hereto is a copy of the report [*or* statement of the case], upon which the said investigation has been ordered.

Dated this day of 18 .

Solicitor, Board of Trade.

Copy report (or statement of case).

No. 2.—Summons to Person against whom a charge is made.

The Merchant Shipping Acts, 1854 to 1876.

To of .

Whereas, under and by virtue of the above Acts, the Board of Trade has ordered a formal investigation to be held into the circumstances attending the of the British ship
of ; and it hath been made to appear to me, the undersigned, that you are a person interested in the said investigation, inasmuch as you are charged with (*here set out the charge*).

These are therefore to require you to be and to appear before me on the day of 18 , at the hour in the noon at , to attend the said investigation.

Given under my hand this day of 18 .

Judge

No. 3.—Order on a party for Payment of Costs of Investigation.

The Merchant Shipping Acts, 1854 to 1876.

In the matter of a formal investigation into (*here state the casualty*) held by (*here set out the authority which held the investigation*).

The Court, having inquired into the circumstances of this shipping casualty, orders (1) that *A. B.*, of , do pay to the Solicitor to the Board of Trade the sum of pounds on account of the expenses of this investigation, on or before the day of , 18 ; *or* (2) that the Board of Trade do pay to *A. B.* of the sum of pounds, on account of the expenses of this investigation, on or before the day of , 18 .

Given under my hand, this day of , 18 .

Judge.

No. 4.—Report of Court.

The Merchant Shipping Acts, 1854 to 1876.

In the matter of a formal investigation into (*here state the casualty*) held by (*here set out the authority which held the investigation*).

I do report that having carefully inquired into the circumstances of the above-mentioned shipping casualty, I have .

I am also of opinion that the costs of this investigation should be paid by *A. B.* to the Solicitor to the Board of Trade [*or* by the Solicitor to the Board of Trade to *A. B.* ; *or* that all parties shall pay their own costs.]

Dated this day of 18 .

Judge.

We [*or* I] concur in the above report.

Assessor.

Assessor.

Nautical Assessors.

List of Nautical Assessors for formal Investigations into Shipping Casualties, approved by Her Majesty's Principal Secretary of State for the Home Department, under the authority of the 30th section of the Merchant Shipping Act, 1876 :—

Royal Navy.	*Mercantile Navy.*
Commander H. D. Burney, R.N.	Captain T. Beasley.
Commander G. H. Forster, R.N.	Captain G. Burnett.
Captain J. F. G. Grant, R.N.	Captain J. S. Castle.
Captain G. T. Holt, I.N.	Captain H. Harris.
Commander H. Knox, R.N.	Captain E. Hight.
Staff Commander Perry, R.N.	Captain W. Parfitt.
Captain B. S. Pickard, R.N.	Captain A. Ronaldson.
Rear-Admiral R. A. Powell, C.B.	Captain J. Sceales.
Commander G. Visconti, R.N.	Captain C. Y. Ward.
	Captain R. Wilson.

Wreck Commissioner.

The Lord Chancellor has appointed Henry Cadogan Rothery, Esq., to be a Wreck Commissioner for the United Kingdom, in pursuance of the provisions of "The Merchant Shipping Act, 1876."

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